SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 212

WEST OHIO GAS COMPANY, APPELLANT,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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IN SUPREME COURT OF OHIO

No. 24104

WEST OHIO GAS COMPANY, a Corporation Organized and Existing under the Laws of the State of Ohio, Plaintiff in Error,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendant in Error

PETITION IN ERROR—Filed April 1, 1933

Plaintiff in error hereby files with this honorable court its petition in error in the above entitled cause, wherein plaintiff in error states:

Plaintiff in error is a corporation organized and existing under the laws of the state of Ohio, and is engaged as a public utility in the business of manufacturing, distributing and/or supplying artificial and/or natural gas to consumers within said state of Ohio. Plaintiff in error owns and in the carrying on of said business operates and uses certain property within said state of Ohio. One of the communities within which plaintiff in error renders its said gas utility service is the city of Lima, Ohio, wherein plaintiff in error supplies artificial gas to its customers. Said city of Lima is a municipal corporation organized under the laws of the state of Ohio.

Defendant in error is an administrative body created under the laws of the state of Ohio and given by said laws certain powers to regulate public utilities operating within the state of Ohio including the power to regulate reasonably rates and charges made by public utilities for their services.

On or about the 19th day of March, 1928, said city of [fol. 3] Lima, purporting to act under the provisions of sections 614-44 and 3983 of the General Code of Ohio,

passed an ordinance No. 2675, purporting to fix and regulate the maximum price which plaintiff in error should be permitted to charge for natural, mixed or manufactured gas furnished to consumers within said city of Lima during a period of five years from and after the effective date of said ordinance, to-wit, April 19, 1928, to April 19, 1933 (hereinafter for convenience generally referred to as "ordinance period"). Thereafter on or about May 9, 1928, plaintiff in error filed with defendant in error its appeal from said ordinance, and elected, pending the determination of said appeal, to charge the schedule of rates in force and effect on said date of March 19, 1928, all as authorized and provided for by sections 614-44, 614-45 and 614-46 of the General Code of Ohio. In and by said appeal plaintiff in error prayed that defendant in error should find and determine that the said rate fixed by said ordinance No. 2675 was unjust, unfair, unreasonable, confiscatory and unlawful and should after hearing fix and determine fair, just and reasonable rates to be charged by plaintiff in error for and during said ordinance period. Said appeal was docketed with defendant in error as cause No. 5137.

By order entered by defendant in error on or about May 9, 1928 plaintiff in error was required, as a condition precedent to its continuing during the pendency of said appeal to charge the rates in effect on March 19, 1928, for said gas utility service rendered within said city of Lima, to furnish a bond with proper and adequate surety in the sum of $88,000.00. On or about May 21, 1928, said bond was filed as required. Thereafter on or about December 15, 1931, defendant in error ordered and directed plaintiff in error to file an additional bond, with good and adequate surety, and on or about January 5, 1932, plaintiff in error filed and had approved by defendant in error an additional [fol. 4] bond as required by said order in the further sum of $652,000.00.

After the filing of said appeal as aforesaid, defendant in error proceeded to hold hearings in said cause as to the valuation of the property of plaintiff in error used and useful in rendering such gas utility service within said city of Lima, and on or about January 27, 1932, entered a final valuation order in said cause, finding that the value as of March 31, 1928, of the property of plaintiff in error used and useful in rendering said gas utility service to con-

sumers within said city of Lima was $1,901,696.26. Thereafter on or about February 19, 1932, and within the time required by statute, plaintiff in error filed its petition for rehearing as to said final valuation in said cause, which petition for rehearing was denied by defendant in error under date of February 25, 1932. No appeal was taken from said final valuation order.

After the entry of said final valuation order in said cause, defendant in error proceeded to hold hearings and receive evidence relative to the revenue derived from, the cost of, and the net return earned in, gas utility service rendered by plaintiff in error to consumers within said city of Lima. Hearings on said matters were completed on or about July 19, 1932, and said case was closed. Thereafter on or about March 8, 1933, defendant in error by order entered without notice to plaintiff in error directed that the annual reports which plaintiff in error had filed with defendant in error for the calendar years 1928, 1929, 1930 and 1931 be made a part of the record in said cause.

On or about March 11, 1933, defendant in error entered a final judgment, decision and order in said cause (hereinafter for convenience generally referred to as the "final order") finding that the maximum rates and charges fixed for said utility service in and by said ordinance No. 2675 [fol. 5] of said city of Lima, appealed from as aforestated, were insufficient, unjust and unreasonable and charges for plaintiff in error to receive, and that the following named rates and charges, to-wit:

400 cubic feet or less used per month, $1.00;
Next 9600 cubic feet used per month, 95¢ per thousand cubic feet;
Over 10,000 cubic feet used per month, 75¢ per thousand cubic feet;
Penalty for non-payment of bill within ten days after receipt of bill, 5¢ per thousand cubic feet,

were just and reasonable rates and charges to be collected for such service, and should be substituted for said rates and charges named in said ordinance and made effective for said ordinance period.

In and by said final order defendant in error asserted that the gross and net revenues derived by plaintiff in error from said gas utility service within said city of Lima under

said rates and charges so fixed for said ordinance period would be sufficient to yield plaintiff in error during said ordinance period a reasonable compensation for such service; and directed plaintiff in error to refund to consumers served by it within said city of Lima during said ordinance period the difference between the amounts actually collected by plaintiff in error from said consumers for such service rendered during said ordinance period and the amount which would have been charged such consumers for such service if the said rates and charges fixed by defendant in error in said final order had actually been charged during said ordinance period. Defendant in error accompanied its said final order with a written opinion. On or about March 18, 1933, plaintiff in error filed with defendant in error its application for a rehearing in said cause, which application was denied by defendant in error on or about March 22, 1933, and to which denial plaintiff [fol. 6] in error then and there duly excepted.

Plaintiff in error says that there is error in said record, decisions, orders, judgment and proceedings of said defendant in error in said cause No. 5137 which is prejudicial to plaintiff in error, affects materially its substantial rights, and deprives it of its property for public use without adequate compensation and denies it due process of law in violation of the XIV amendment of the constitution of the United States and the constitution of the state of Ohio; and says that said final order entered by defendant in error in said cause on March 11, 1933, is invalid, unlawful and unreasonable in the following respects, inter alia, to-wit:

1. Said final order, if enforced, will confiscate and take from plaintiff in error for the five-year period during which said order is made effective, and during each and every year of said ordinance period, the property used by plaintiff in error in rendering gas utility service within said city of Lima; and will prevent plaintiff in error from earning an adequate and compensatory rate of return on the value of said property during said ordinance period and each and every year thereof—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

2. The action of defendant in error in failing to accord due and proper weight to the evidence introduced in said cause; in disregarding many of the facts established by such evidence, and in making findings and entering a final order in said cause that are wholly unsupported by any evidence in said cause and contrary to the facts established by such evidence, is a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in [fol. 7] contravention of the constitution of the state of Ohio.

3. The action of defendant in error in ordering and directing plaintiff in error to make refunds to consumers of gas utility service rendered by plaintiff in error within said city of Lima during the said ordinance period, but in failing to consider the evidence as to the actual earnings of plaintiff in error during said ordinance period, and each calendar year of said ordinance period, and in failing to determine therefrom by what amount, if any, the net return earned by plaintiff in error from such service during said ordinance period and each such year thereof, exceeded the amount which plaintiff in error must be permitted to earn if the confiscation of its property devoted to such service is to be avoided, is erroneous, arbitrary, illegal and unlawful, is a denial to plaintiff in error of due process of law and results in the confiscation for public use of the property of plaintiff in error devoted to such service—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

4. Defendant in error erred in failing and refusing to determine upon the basis of the evidence the net return which would be earned by plaintiff in error if the rates fixed by said final order are made applicable to gas utility service rendered by plaintiff in error within said city of Lima during said ordinance period, and during each of the years covered thereby. Such a determination would necessarily show that if said rates fixed are put in effect plaintiff in error would not, during said ordinance period or during any of the calendar years in all or part of which said rates would be effective, obtain a reasonable and compensatory return upon the fair value of its property de-

voted to such service. The action of defendant in error in entering in said cause a final order that is not based [fol. 8] upon a correct determination of the amount of such net return was a denial to plaintiff in error of due process of law; and, if said final order is not set aside, it will cause the confiscation of plaintiff in error's property for public use without adequate compensation during said ordinance period, and during each calendar year thereof—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

5. The action of defendant in error in fixing the distribution expense, commercial expense and general and miscellaneous expense of plaintiff in error to be taken into account in determining the net return earned from gas utility service rendered within said city of Lima, by taking plaintiff in error's average system cost per customer for each such item of expense, and multiplying such amount by the number of customers of plaintiff in error in said city of Lima, is an inaccurate, arbitrary, unreasonable and unlawful method of determining such items of expense incurred by plaintiff in error in rendering said service within said city of Lima, disregards the facts in evidence as to the true amount of such expenses incurred in such service, and is a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

6. The action of defendant in error in determining the question whether any refunds, and, if any, what amount of refunds, should be made by plaintiff in error to consumers of gas utility service rendered by it within said city of Lima, by averaging the revenues, operating expenses and earnings of plaintiff in error from such service during the four-year period from 1928 to 1931, both inclusive, is an erroneous, unreasonable and unlawful method of determining such question, even if defendant in [fol. 9] error had followed the evidence as to the operating expenses of plaintiff in error in rendering such service during said years, deprives plaintiff in error of its property for public use without adequate compensation, and is a denial to it of due process of law—all in contravention

of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

7. The action of defendant in error in refusing to grant the rehearing in said cause duly prayed for by plaintiff in error, and thereby denying plaintiff in error the right to show in evidence in said cause the exact effect which the rate fixed by defendant in error would have on the net earnings of plaintiff in error during the five-year period covered by said ordinance, and each and every year thereof, was arbitrary and unlawful and a denial of due process of law to plaintiff in error—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

8. The action of defendant in error in refusing to grant the rehearing in said cause duly prayed for by plaintiff in error, and thereby denying to plaintiff in error the right to show in evidence the facts as to its revenues received, expenses incurred and net earnings derived in rendering gas utility service within said city of Lima for the calendar year 1932 and for the first two months of 1933, all being facts that were not available when hearings were completed in said cause, was arbitrary and unlawful and a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

9. The action of defendant in error in refusing, as requested by plaintiff in error in its application for rehear- [fol. 10] ing duly filed in said cause to place in evidence in said cause the annual report filed by plaintiff in error with defendant in error for the year 1932, was arbitrary and unlawful, and a denial to plaintiff in error of due process of law—all in contravention of the XIV amendment of the constitution of the United States, and also in contravention of the constitution of the state of Ohio.

10. Under said rates provided for by said final order, as aforestated, plaintiff in error would not have secured from gas utility service rendered to consumers within said city of Lima during the years 1928 to 1932, both inclusive, or

during any of said years, sufficient revenues to pay the reasonable costs of rendering said service and give plaintiff in error a fair, adequate and compensatory return on the value, as found and fixed by defendant in error in its final valuation order in said cause dated January 27, 1932, of the property devoted by plaintiff in error to said public service during said ordinance period.

11. Under said rates provided for by said final order, as aforestated, plaintiff in error would not, during such part of 1933 as said final order provides said rates shall remain in effect, secure from said gas utility service rendered within said city of Lima sufficient revenues to pay the reasonable costs of rendering such service and give plaintiff in error a fair, adequate and compensatory return on the value, as found and fixed by defendant in error in its final valuation order in said cause dated January 27, 1932, of the property devoted by plaintiff in error to said public service during said ordinance period.

12. Defendant in error in fixing rates in said cause and in finding that said rates fixed would produce adequate revenues to pay the cost of gas utility service rendered by plaintiff in error within said city of Lima and to yield plaintiff in error a fair return upon the fair value of the [fol. 11] property devoted to said service, has improperly ignored the evidence as to cost of service and has either arbitrarily reduced below the actual cost thereof or disregarded entirely, many items of operating expenses incurred by plaintiff in error in rendering said service, and by such method has attempted to confiscate the property of plaintiff in error for public use without adequate compensation.

The principal instances in which defendant in error has so erred, are as follows:

(a) By arbitrarily ignoring a large part of the expense to plaintiff in error arising because of unaccounted gas losses actually suffered by plaintiff in error in rendering gas utility service within said city of Lima, and thereby substantially reducing below actual cost to plaintiff in error the expense item of gas purchased and/or manufactured by it for use in rendering such service.

(b) By arbitrarily elminating as an operating expense a substantial part of the distribution expense actually in-

curred by plaintiff in error in rendering gas utility service within said city of Lima.

(c) By arbitrarily eliminating as an operating expense a substantial part of the commercial expense actually incurred by plaintiff in error in rendering gas utility service within said city of Lima.

(d) By arbitrarily eliminating as an operating expense in connection with rendering gas utility service within said city of Lima, a substantial part of the expense actually incurred by plaintiff in error for the purpose of retaining its existing business and securing new business within said city of Lima.

(e) By arbitrarily eliminating as an operating expense a substantial part of the general and miscellaneous expense [fol. 12] actually incurred by plaintiff in error in rendering gas utility service within said city of Lima.

(f) By arbitrarily failing and refusing to include as an operating expense in connection with rendering gas utility service within said city of Lima, the expenses of plaintiff in error in its appeal from said rate ordinance passed by said city of Lima on March 19, 1928, and by failing and refusing to consider such item of expense, amortized over the term of said ordinance, in determining the net return earned by plaintiff in error from such service.

(g) By arbitrarily disregarding the fact established by the evidence that commencing with the year 1932 the excise tax which plaintiff in error is required to pay the state of Ohio in connection with rendering gas utility service within said city of Lima has been increased from 1.35% per annum of the revenues derived from such service to 2.35% per annum of such revenues, or by an amount in excess of $4,200 per annum.

(h) By arbitrarily refusing to allow as an item of operating expenses an adequate amount for retirement reserve, which allowance should have been an amount not less than the sum of $53,639 per annum claimed by plaintiff in error.

(i) By arbitrarily eliminating the annual allowance of $23,416 heretofore authorized by defendant in error for amortization of the gas transmission main now being used

in rendering gas utility service to consumers within said city of Lima.

[fol. 13] 13. The findings of defendant in error as to the average actual operating expenses of plaintiff in error in rendering gas utility service within said city of Lima during the four-year period ending December 31, 1931, are arbitrary, unreasonable and unlawful, and not based upon the evidence in this cause.

14. Said final order lowering retroactively, without the consent of plaintiff in error, the rates that have been charged by plaintiff in error for gas utility service rendered within said city of Lima during said ordinance period, when plaintiff in error, under the rates actually charged, has earned during said ordinance period an annual return of less than 8% on the fair value of the property devoted by it to such service, is arbitrary, unreasonable and unlawful, is in conflict with the evidence in this cause and results in the confiscation of its property.

15. The finding of defendant in error that rates for gas utility service within said city of Lima should be fixed on a basis that would permit plaintiff in error to earn an average return per annum of only 6% on the value of its property devoted to such service and that a return at such rate would be a fair, reasonable, adequate and non-confiscatory return to be earned by plaintiff in error from such service during said ordinance period, and each of the years within said ordinance period, is arbitrary, erroneous and unlawful, is not supported by the evidence in said cause, and results in the confiscation of the property of plaintiff in error devoted to such service. If confiscation is to be avoided the rates which have actually been charged by plaintiff in error during the pendency of said cause could not be reduced for said ordinance period, or any part thereof, unless and except to the extent, if any, that it were shown that during such time, or part thereof, plaintiff in error has earned from such service a return at a rate greatly in excess of [fol. 14] said 6% per annum on such property, to-wit: in excess of at least 8% per annum. The evidence in said cause establishes that at no time during said ordinance period has plaintiff in error earned a return as high as 8% per annum.

16. The finding of defendant in error as to the average net earnings of plaintiff in error for the four-year period ending December 31, 1931, and as to the average per centum of return earned during said period upon the value of property devoted by plaintiff in error to gas utility service within said city of Lima, and that an excessive rate of return was earned by plaintiff in error during such period, and each year thereof, and each of said findings, are arbitrary and erroneous and not based upon the evidence in said cause.

17. Defendant in error has erroneously found that the rates ordered in effect by its said final order will produce adequate revenues during said ordinance period to pay all operating expenses incurred by plaintiff in error in rendering gas utility service within said city of Lima and provide an annual return of at least 6% upon the value of the property devoted to such service as found by defendant in error in its said final valuation. The undisputed evidence in said cause clearly establishes that such conclusion is incorrect, and that said rates will not, if made applicable to any year for which they have been ordered in effect, leave plaintiff in error with sufficient revenues from such service to pay the operating expenses thereof and provide even such an inadequate return.

18. Defendant in error in entering its final order in said cause has ignored the evidence as to the effect of the present economic situation upon the revenues derived by plaintiff in error from gas utility service within the said city of Lima, and the fact that even under existing rates plaintiff in error's revenues for the year 1931 were materially [fol. 15] less, and its net earnings available for return were materially less, than the average for the four-year period ending December 31, 1931; and defendant in error has arbitrarily denied the request made by plaintiff in error in its petition for rehearing, duly filed in said cause, for an opportunity to show the fact that both plaintiff in error's revenues and net earnings from such service were substantially lower in 1932 than in 1931.

19. The finding of defendant in error as to the amount of revenue that would be derived by plaintiff in error during said rate period from gas utility service within said city of Lima under the rates fixed by said final order is

erroneous, and is an amount greatly in excess of the actual revenues which would be derived by plaintiff in error if said rates are placed in effect for said ordinance period.

20. The finding of defendant in error that the rates provided for in its said final order will produce for plaintiff in error an average minimum annual gross revenue of approximately $420,000 is erroneous. Such rates produce a much lower average annual gross revenue for said ordinance period. Under existing rates plaintiff in error's gross revenue from gas utility service in said city of Lima was but $457,775.74 for the year 1931, and the rates fixed by defendant in error would reduce these revenues by approximately 13½%. The action of defendant in error in refusing plaintiff in error the rehearing duly prayed for and thereby precluding plaintiff in error from showing in the record the fact that its revenues from such service were, under the rates actually charged, but $427,062.58 for the year 1932, was arbitrary and unlawful and a denial to plaintiff in error of due process of law.

21. The finding of defendant in error that under the rates now in effect, plaintiff in error secures an excessive amount of revenue from gas utility service within said city of Lima is erroneous and is not supported by the evidence in said cause.

[fol. 16] 22. The final order of defendant in error is erroneous in directing plaintiff in error to make to consumers of gas utility service rendered by plaintiff in error within said city of Lima refunds equal to the difference between the respective sums paid by such consumers for such service rendered during said ordinance period and the amount which said respective consumers would have paid for such service if the rates fixed in said final order had been in effect during said ordinance period.

23. Defendant in error erred in fixing rates in said cause and in finding that said rates were adequate and compensatory without considering the amount of any and all additional capital investment made by plaintiff in error since March 31, 1928 in property used and useful in rendering gas utility service within said city of Lima.

24. Said final order is not sustained by sufficient evidence and is contrary to law.

25. Said final order is against the weight of the evidence.

26. Defendant in error erred in denying plaintiff in error a rehearing in said cause.

27. The finding of defendant in error that the quality of service rendered by plaintiff in error within said city of Lima is far from satisfactory, is arbitrary, and is not based upon, but is contradictory to the evidence in said cause.

28. Defendant in error has failed and refused to fix rates and determine the matters at issue in accordance with the principles established by the Supreme Court of the United States as applicable to such proceedings and as necessary to be followed if a denial of due process of law is to be avoided.

29. The action of defendant in error in arbitrarily placing in evidence, after the termination of hearings in said cause, the annual reports filed by plaintiff in error with defendant in error for the years 1928, 1929, 1930 and 1931, [fol. 17] in failing to include among the reports placed in evidence the annual report of plaintiff in error for the year 1932, and in refusing, when this fact was specifically called to its attention, to include said annual report for 1932 as part of the record in said cause, is arbitrary, illegal and unlawful.

Wherefore, plaintiff in error prays that defendant in error may be required to transmit forthwith to the clerk of this court a certified transcript of the journal entries, original papers or certified transcripts thereof, a certified transcript of all evidence adduced upon the hearing before defendant in error in the proceedings complained of, all the exhibits introduced in evidence during said proceedings, and a certified transcript of all judgments, decisions and orders rendered by defendant in error in said proceedings; that the same may be filed in this court; that the said final judgment, finding and order made by defendant in error on March 11, 1933 in said cause shall be in all respects reversed, vacated, set aside and held for naught; and that defendant in error shall be ordered and directed by this honorable court to enter no judgment or order in said cause No. 5137 that reduces or changes the rates actually charged by plaintiff in error during the pendency of said cause; and

that plaintiff in error may be restored to all things that it has lost by reason of the acts of defendant in error hereby complained of.

West Ohio Gas Company, an Ohio Corporation, By (Signed) Chas. C. Marshall, (Signed) H. O. Bentley, (Signed) Cooke, Sullivan & Ricks, Its Attorneys.

[fol. 18] IN SUPREME COURT OF OHIO

WEST OHIO GAS CO.

v.

PUBLIC UTILITIES COMMISSION OF OHIO

(Two cases)

Public Utilities Commission—Administrative powers and discretion — Non-interference by courts — Commission may enter order nunc pro tunc, when—Determination of gas rate—Four-year time basis not disturbed, when—Refusal to reopen case, after final submission, not abuse of discretion—Finding transmission line useful, not disturbed—Amortization ordered, but not consummated—Allocation system, adopted by Commission, not disturbed, when—Books of utility prima facie evidence of expenditures until integrity attacked—Burden on utility to support entries, when integrity attacked—Commission cannot manage utility or dictate its policies—Items considered most favorable to utility, and income rate lawful and reasonable—Net rate of 6 per cent not unlawful and unreasonable.

1. The Public Utilities Commission of Ohio has broad administrative powers and a wide extent of administrative discretion, with the exercise of which, upon sufficient evidence and within its statutory limits, the courts do not interfere; but the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements. (Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248; Columbus Gas & Fuel Co. v. Public Utilities Commission, and City of Co-

lumbus v. Public Utilities Commission, 127 Ohio St., 109, distinguished.)

2. Where no intervening rights have accrued, the Public Utilities Commission, in the exercise of its administrative discretion and in order to make its record speak the truth, may enter an order nunc pro tunc.

[fol. 19] 3. The time basis of four years, fixed by the Public Utilities Commission of Ohio in determining the rate to be made for a public utility, will not be disturbed, in the absence of proof that such basis was arbitrary.

4. The refusal to reopen a case after final submission, for the purpose of allowing a public utility to file and have considered its annual report for 1932, after the Public Utilities Commission had fixed the years 1928, 1929, 1930 and 1931, four average years, as its time basis, does not constitute an abuse of administrative discretion.

5. A finding made by the Public Utilities Commission, to the effect that a forty-four mile transmission line owned by a gas company is useful, will not be disturbed unless such finding is against the manifest weight of the evidence. And this is true despite the fact that the same Public Utilities Commission had previously made an order to amortize such transmission line, which had not been amortized.

6. An allocation system adopted by the Public Utilities Commission will not be disturbed in the absence of a showing that such system is unfair to the public utility.

7. The Public Utilities Commission must accept the books of a utility as being prima facie evidence of the expenditures contained therein, unless and until the integrity of the entries is attacked.

8. When the integrity of such entries is attacked, then the public utility carries the burden of supporting its entries by the greater weight of the evidence.

9. The Public Utilities Commission cannot assume to manage a public utility or dictate its policies.

10. When the items of rate-case expense, new business, excise tax, unaccounted for gas, donations and contributions are considered in their most favorable light to the public utility and, after such consideration, a rate of income

that is not unlawful and unreasonable is fixed by the Public Utilities Commission for such public utility, such rate will not be disturbed.

11. A net rate of six per centum per annum, in the light of the times, is not unlawful and unreasonable.

(Nos. 24104 and 24105—Decided May 16, 1934)

Error to the Public Utilities Commission.

OPINION

The operative facts and governing principles of law being similar to these cases they were submitted together notwithstanding the West Ohio Gas Company and the Pub- [fol. 29] lic Utilities Commission filed separate briefs in case No. 24104.

The petitions in error are of such superlative amplitude as to preclude their being set out in haec verba, and we are content to set out the errors complained of in synoptical statement.

The parties will be referred to in the statement and in the opinion as the "Gas Company" and the "Commission."

Case No. 24104 involves the rate fixed for the city of Lima, and case No. 24105 involves the rate fixed for the city of Kenton, and in the matter of differentiation will be referred to as the "Lima" case and the "Kenton" case.

The Lima case will be given first consideration. This case is a bit novel in that it involves, as will be seen from the statement of fact, the fixing of a rate for the sale of mixed artificial and natural gas of low B. T. U. content.

The claim is made that residents of the city of Lima pay more for their gas per thousand cubic feet than any other city of Ohio. This is denied. Comparisons are made by way of proof and disproof. These comparisons add volume to the briefs, but are of little, if any, aid to the court.

The sole question before this court is whether or not the rate fixed by the commission is unreasonable and unlawful. The claim is likewise made that the rate fixed is confiscatory. With the claim of confiscation, as such, we are little concerned, as it must be conceded as a matter of law that if a rate is confiscatory it is both unreasonable and unlawful.

Long prior to 1924 natural gas for heating purposes was distributed in Lima by the Lima Natural Gas Company. At the same time the Lima Gas Light Company, an affiliated corporation, manufactured and sold in the city of Lima a gas for illuminating purposes. Each of these companies owned a separate distributing system, and, in addi-[fol. 21] tion thereto, the Gas Light Company owned a plant where it manufactured an illuminating gas of a low B. T. U. content. The market for the sale of illuminating gas gradually ceased to exist, until finally the manufacturing plant and distributing system of the Gas Light Company became obsolete. In 1923 the two properties were combined, the Natural Gas Company securing permission from the Public Utilities Commission to furnish the city with a mixed fuel gas. By this method the physical plant of the Gas Light Company was added to the system of the Natural Gas Company, and the loss by obsolescence was avoided. These two combined systems, together with replacements and additions, constitute the gas properties now being operated in the city of Lima by the plaintiff in error Gas Company.

In addition to the distributing system and the manufacturing plant the Natural Gas Company owned forty-four miles of transmission line, extending east from the city of Lima, which is also a part of the present property. It was during this period that the Insull interests of Chicago acquired the stock in the Lima companies, and also acquired the stock in other gas distributing companies in nearby towns. In 1924 these new owners organized the West Ohio Gas Company, plaintiff in error here, and caused the assets of these various distributing companies owned by them to be sold to this West Ohio Gas Company. The common stock of the West Ohio Gas Company was acquired by the Midland Utilities Company of Chicago, another Insull corporation, which in turn is owned by still another Insull company. It is claimed that the prices paid for the stocks of these various local companies were not available in this proceeding for the purpose of determining the original cost of property.

In December, 1924, on the occasion of the transfer of the assets to the West Ohio Gas Company, the Commission authorized the issuance of $3,376,000 of bonds and pre-

[fol. 22] ferred stock securities. This order was based upon previous appraisals, and not related to purchase price. Eight per cent. preferred stock, an issue of $750,000, was sold to another Insull company at 87½. West Ohio Gas Company has no gas company affiliates in the state of Ohio, produces no natural gas, and is simply a distributing company in that regard. No cost records of the property prior to 1924 are available. This forty-four miles of transmission line, which is one of the major items in the valuation of property, is large enough to supply a population much larger than that of Lima with natural gas. Lima requirements being approximately 1,000,000 cubic feet per day, the artificial plant in Lima has a capacity sufficient to supply a population more than double that of Lima. These capacities of the transmission line and the artificial gas plant are in addition to their use in supplying other communities.

Because of the character and use of this property the Commission did not reduce the valuation of this plant, which admittedly has a capacity of practically two or three times the requirements of Lima; and the entire value of all this property was included in the valuation finding of the Commission, allocated, of course, as between Lima and the other communities. This artificial gas plant and transmission line constitute more than one-third of the entire valuation. This set-up has remained unchanged since 1924, when acquired by the Insulls.

Twenty years ago the predecessor of the Gas Company distributed in Lima natural gas having a B. T. U. content of between 1000 and 1100 at a retail price of 30¢ to 33¢. The producing company received 65 per cent. of this price and the distributing company 35 per cent., or, in other words, the natural gas was distributed in Lima for less than 12¢.

In March, 1928, the Gas Company was receiving an average price of $1.29 for each thousand cubic feet of gas sold [fol. 23] in Lima. Under a contract with the Ohio Fuel Gas Company the West Ohio Gas Company is buying natural gas at 55¢ delivered to the gate at Lima. At the same time the Gas Company is manufacturing a low B. T. U. content gas for 20¢ per thousand in the artificial gas plant. These two products are mixed. The mixture contains 35 per cent. natural gas and sixty-five per cent. artificial gas, so that the total production cost of 1000 cubic feet of this mixed gas is approximately 32½¢.

The Gas Company contends that the B. T. U. content of this mixed gas is from 500 to 550, or approximately one-half of that contained in natural gas. There is evidence that the average is not over 475.

The attempt of the Gas Company to compare its rates with those prevailing where gas is supplied alone by an artificial gas plant is also unwarranted. Lima is being supplied with a diluted natural gas. This 32½¢ per thousand production cost represents the Gas Company's figures, but nevertheless to that the Commission added 3½¢ to cover incidental cost before distribution and leakage during distribution, making a total of 36¢ per thousand as the production cost. Subtracting this from the retail price of $1.29 claimed by the Gas Company leaves 93¢ for distribution and profit, a service which was performed twenty years ago for 12¢. The cost of gas in this period has increased about sixty per cent.

At all times during the period involved there has been an abundant supply of natural gas available. There are approximately 10,000 gas consumers in the city of Lima, and the city offered exhibits showing the annual income of the Gas Company, calculated on the ordinance rates applied to the volumes of gas sold by the Gas Company when actually sold, at a time when the Gas Company was charging rates almost 50 per cent. higher than the ordinance rates. The tariffs on file at the Commission show that [fol. 24] natural gas out of this same transmission line is sold by the Ohio Fuel Gas Company at Ada, Ohio, within twenty miles of Lima, at 65¢ per thousand.

It was the contention of the city of Lima before the Commission—and, through its counsel, it is again raised here—that, while a reasonable rate was desired, which would enable the utility to make a reasonable profit, thus assuring good service, the Gas Company had pursued a policy of continually increasing rates for the sake of immediate gain, in direct violation of the economic principle that the success of such a business depends largely upon increasing volume.

It was further contended on the part of counsel for the city of Lima that the people of Lima have been educated by the Gas Company and its prices to consider gas as a very expensive commodity, to such an extent that per capita consumption in that community is very low.

The Commission, after determining proper expenses allowable in the annual operation, used the volumes of gas actually sold by the Gas Company in setting up the rate structure at which it arrived in this case, without taking into consideration any possible increase in gas consumption upon the establishment of lower rates.

Subsequent to the filing of the petition in error herein, it came to the attention of the Commission that the sum of total expenses appearing on page 6 of the final order of the Commission, in the amount of $305,686.88, was an erroneous total of the individual items of expense as fixed by the Commission, the correct total being $301,920.92.

Numerous calculations appearing in this final order were made on the basis of this erroneous figure, so that the order did not correctly set forth the findings of the Commission as made. In order to correctly reflect its true findings, the Commission on May 19, 1933, issued a nunc pro tunc order dated March 10, 1933. The Gas Company [fol. 25] asks that this order nunc pro tunc be sticken from the record.

Prior to March, 1928, there was no gas rate ordinance in the city of Lima, the rates having been established by the Commission in 1925, followed by a slight voluntary reduction by the Gas Company commencing in 1926. On March 19, 1928, the city of Lima passed a rate ordinance for the period of five years from and after April 19, 1928. The rates prescribed in this ordinance were not accepted by the Gas Company, and it filed an appeal from such rates to the Commission under Section 614-44 et seq., General Code.

Hearings were had from time to time before the Commission, and on September 15, 1931, a tentative valuation finding was made. Protests were filed, both by the city of Lima and the West Ohio Gas Company, and on January 27, 1932, the Commission issued its final valuation order fixing the value of the company property to be used as a rate base in the sum of $1,901,696.26. The Gas Company did not seek a review of this order and is not now attacking this valuation in this proceeding.

Thereafter further hearings were had before the Commission relative to revenues and expenses, for the purpose of determining reasonable rates. The case was finally submitted to the Commission on July 19, 1932, and was under

consideration by it until March 11, 1933, when the final rate order herein complained of was issued. During the pendency of this proceeding the Gas Company elected, under the provisions of Section 614-44, et seq., General Code, to continue to charge the rates in effect at the time the ordinance was passed, and entered into bond conditioned and agreeing to refund to its customers the difference between the rates collected under bond and the rates ultimately fixed in this proceeding. The petition in error challenges the rates fixed by the Commission.

[fol. 26] The rates in effect at the time the ordinance was passed are as follows:

$1.25 for the first 400 cubic feet or less per month,
$1.05 per M c. f. for the next 9600 cubic feet,
$1.00 per M c. f. for the next 25,000 cubic feet,
.75 per M c. f. for all over 35,000 cubic feet.

The rates prescribed by ordinance were as follows:

90¢ for the first 1000 cubic feet,
80¢ per M c. f. for the next 3000 cubic feet,
75¢ per M c. f. for the next 6000 cubic feet,
55¢ per M c. f. for all over 10,000 cubic feet.

The Commission prescribed the following rates:

$1.00 for the first 400 cubic feet, or less, per month,
.95 per M c. f. for the next 9600 cubic feet,
.75 per M c. f. for all over 10,000 cubic feet per month.

The Gas Company urges numerous grounds for reversal, but they may be resolved substantially as follows:

1. Alleged error of the Commission in refusing to admit in evidence the 1932 annual report of the Gas Company tendered on the occasion of the filing of a motion for rehearing.

2. The contention is raised that the rates established by the Commission do not yield sufficient revenue to pay operating costs and afford a fair return on the valuation, and are therefore confiscatory and in contravention of the provisions of the Fourteenth Amendment of the Constitution of the United States, and also of the provisions of the Constitution of Ohio.

This latter and major contention of the Gas Company is based upon a number of alleged claims, viz:

(a) The rate of return on the valuation fixed by the Commission is inadequate.

(b) The Commission should have treated each annual period separately instead of establishing one rate for the entire period.

(c) The allowance by the Commission to the Gas Com- [fol. 27] pany for losses through unaccounted-for gas should have been 9 per cent, instead of 7 per cent.

(d) The Commission allowed for direct distribution expense $34,892 instead of the sum of $40,622 claimed by the Gas Company.

(e) The Commission allowed $800 less annually for commercial expenses than that claimed by the Gas Company.

(f) The Commission allowed $5,000 annually as a reasonable expenditure for attaching new business, whereas the Gas Company claimed that this figure should be approximately $12,000.

(g) The Commission allowed for general and miscellaneous expense the sum of $44,713, which the Gas Company claims is wrong in three particulars: (1) That there was an error in mathematical calculation of the Commission; (2) that the Commission allowed nothing for rate case expense, and (3) the Commission in allocating this item used a per customer basis whereas the Gas Company contended for a consumption basis allocation.

(h) The Commission allowed 1.4 per cent. of the depreciation property as a reasonable amount to set aside for depreciation reserve, whereas the Gas Company contended for 3 per cent.

(i) The Commission disallowed a claim made by the Gas Company for amortization of the forty-four mile transmission line in the amount of approximately $23,000 annually.

(j) The Gas Company claims the Commission did not take into consideration the 1 per cent. increase in the state excise tax which became effective April 5, 1932.

These are substantially all of the issues now raised before the court in this case.

Mr. Charles C. Marshall, Mr. Harry O. Bentley, Messrs. [fol. 28] Cooke, Sullivan & Ricks and Mrs. Edmond W. Hebel, for plaintiff in error.

Mr. John W. Bricker, Attorney General, Mr. Thomas J. Herbert and Mr. Donald C. Power, for Public Utilities Commission; Mr. Melvin C. Light and Mr. Elmer E. Welty, for the City of Lima; Mr. Paul T. Mahon, Mr. L. B. Brown, and Mr. John H. Pfeiffer, for the City of Kenton.

STEPHENSON, J.:

The Gas Company complains generally that the Commission, in its process of fixing the rate herein, has not followed the procedural requirements, and has thereby denied to it due process of law, and that the rate fixed by the Commission is unreasonable and unlawful.

We will consider the specific questions raised in the Lima case in inverse order.

The valuation fixed by the Commission on September 15, 1931, for property used and useful in the city of Lima, as of a date certain, to wit, March 31, 1928, the effective date of the rate ordinance passed by the city, was in the amount of $1,901,696. Protests against such valuation were filed by both the Gas Company and the city, but no review of this order was had, and this sum so fixed must be regarded as a valuation binding upon the Gas Company and the city alike, and is the rate base.

The Gas Company complains that the Commission in fixing the rate did not take into consideration the one per cent. increase in the state excise tax, which became effective April 5, 1932.

Questions arise in every rate-making case, and arise in this case, as to the extent of authority of the Public Utilities Commission in fixing rates. Someone has said that whereas we formerly had but three branches of government, the executive, judicial and legislative, we now have four, in that we have grown an administrative branch. True, administrative boards are, in the main, fact finding [fol. 29] bodies; but without at least quasi-judicial power they could not justify their existence. We accept the ruling of Chief Justice Hughes as definitive of the powers of

administrative bodies, as expressed in Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S., 248, 76 L. Ed., 273, 52 S. Ct., 146. In this case the Chief Justice was dealing with the powers of the Interstate Commerce Commission. He said:

"We are thus brought to the fundamental considerations governing the authority of the Commission. It has broad powers and a wide extent of administrative discretion, with the exercise of which, upon evidence, and within its statutory limits, the courts do not interfere. The important and salutary functions of the Commission to enforce public rights are not to be denied or impaired. But the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements."

The opinion is not quoted in full, as the unquoted part is not pertinent in that it deals with the effect of the Hoch-Smith Resolution upon the powers of the Commission. While a federal administrative board, operating under federal laws, was being dealt with in this opinion, the general principles governing administrative bodies, whether federal or state, are much the same.

In the following rule we are fully cognizant of the seventh paragraph of the syllabus in the case of Columbus Gas & Fuel Co. v. Public Utilities Commission, and City of Columbus v. Public Utilities Commission, 127 Ohio St., 109, 187 N. E., 7. As has been heretofore said, no question is raised in this case as to the valuation of the Gas Company's property.

As some of the questions presented herein in effect charge the Commission with an abuse of discretion, it was [fol. 30] deemed proper to announce the rule we would follow.

The one per cent. increase in the excise tax is not given serious consideration by the Gas Company. Section [2294-4], General Code (114 Ohio Laws, pt. 2, 19, Section 4). This tax was effective only slightly more than a year ago under the ordinance passed by the city of Lima. Taking the gross revenue for 1931 as a basis, the amount would be somewhere between four and five thousand dollars, but such tax was not payable until 1932. The Commission took a four

year basis, viz: 1928, 1929, 1930 and 1931. There is nothing in the record to show that this was an arbitrary basis. There were two fat years and two lean years considered. By considering these four years, an average rate was reached. The Commission barely "got under the wire" with its finding and order, as it was, its finding being announced about a month before the expiration of the ordinance period. The Gas Company, after the matter had been finally and fully submitted and the calculations made on a four year basis, and within a short time before the Commission made its finding and order, asked for a rehearing in which they could submit their 1932 report. To have considered the year 1932 would have required the Commission to revamp all the work it had done, and we do not think it abused its administrative discretion in refusing the application.

Did the Commission err in disallowing the claim of the Gas Company for the amortization of the forty-four mile transmission line in the approximate amount of $23,000 annually?

This court has heretofore held, in Columbus Gas & Fuel Co. v. Public Utilities Commission, and City of Columbus v. Public Utilities Commission, supra, that the Ohio legislative formula for arriving at a rate base contained no provision for amortization and that the Commission had no "vestige of discretion" to go beyond the statute. Our [fol. 31] statutes do provide for "Depreciation, if any, * * * for existing mechanical deterioration, for age, for obsolescence, for lack of utility or for any other cause * * *." This is a provision of Section 499-9, General Code. It is a fair law, and under it no public utility is saddled with property that is affected with mechanical deterioration. This property phase is considered in determining a rate base. After the rate base has been determined, is it fair to permit the public utility to take out of its earnings an amount equal to the replacement value of the property in question? The Commission found that this transmission line was useful to the Gas Company, and in so finding it does not run counter to the manifest weight of the evidence, as there is evidence in the record to support it.

The Gas Company claims that the Commission is bound by a former order in which it made an allowance for the amortization of this pipe line. That is "water on the dam"

and the Commission did not see fit to be further bound by it, nor was it required to be so bound. This order was made April 25, 1925, by the Commission, on the plea of natural gas shortage, which plea at that time had some foundation in fact, but the Gas Company did not set up the amortization for such purpose after allowance; but when hailed before the Commission in a rate proceeding it attempts to reassert such claim, when as a matter of fact there is no shortage of natural gas.

It appears from the record that the Gas Company bears all the maintenance expense of this line. It further appears that the entire value of the line allocable to Lima is included in the base of $1,901,696.26 fixed by the Commission as the value of the depreciable property on which the allowance of 1.4 per cent. as an annual depreciation charge was computed. We fail to see wherein the Commission erred in this respect.

The Gas Company excepts to the allowance by the Com-[fol. 32] mission of 1.4 per cent. of the depreciable property as a reasonable amount for depreciation reserve. The Gas Company contends for 3 per cent.

We have little trouble with this proposition. This finding was made from seven years experience, 1925 to 1931, inclusive, as shown by the Gas Company's book value. The fact is that the Commission was more liberal in this regard than the book value warranted.

The Commission allowed for general and miscellaneous expense the sum of $44,713, which the Gas Company claims is wrong in four particulars, namely:

1. That there was an error in mathematical calculation;

2. That nothing was allowed for rate-case expense;

3. That the Commission used the per customer basis in allocating this item instead of a consumption basis;

4. That the Commission overlooked a substantial part of such expenses, as shown by its annual report.

The alleged errors in calculation were treated fairly by the Commission.

It must be conceded that the Gas Company is entitled to a fair and reasonable allowance for rate-case expense. The Gas Company claims an allowance of $33,542.63 for rate-

case expense in these proceedings to May 1, 1932. The Commission is not obliged to accept the bald figures of the Gas Company without a showing that the figures are fair and reasonable. Spreading the amount claimed by the Gas Company over a period of six years, the length of time that this rate case was pending, and allowing, as contended by the Commission, the sum of $5,100 per year, rate fixed by the Commission would not be lowered. The Commission would have been warranted in ignoring this item of general and miscellaneous expense entirely in the absence of proof that the Gas Company's book figures represented an amount that was fair and reasonable. The Commission adopted the per customer plan in allocating general and miscellaneous expense to the city of Lima. The Commis- [fol. 33] sion may, in the exercise of its administrative discretion, adopt a plan for the allocation of such item, and if the plan is fair to both the public utility and the consumer the court will not disturb it.

It is further claimed by the Gas Company that even in its allocation according to the per customer plan, the Commission erred in that it did not give consideration to 470 new customers in four small towns outside the city of Lima added "sometime" in 1931, and 1070 new customers in Delphos added at the end of that year.

An examination of the record develops the fact that the Commission on the per customer averages considered the entire system of the Gas Company in the application of its plan, using the figures obtained from the annual reports as follows:

	1928	1929	1930	1931	Average
Distribution Expense	$3.77	$3.54	$3.24	$3.71	$3.56
Commercial Expense	2.14	1.95	1.97	2.11	2.04
New Business	.85	1.09	1.14	1.13	1.05
Gen. and Misc. Expense	3.40	4.02	2.85	3.49	3.44

We see nothing unfair in this method, and on readjustments we fail to see where the Gas Company was treated unfairly.

The Commission allowed the sum of $5,000 annually for attaching new business, whereas the Gas Company claims it should have been allowed approximately $12,000.

The Gas Company insists that before the Commission can reduce the amount of this item, as shown by its books,

the Commission must show that such an amount is unfair and unreasonable.

Such a rule would completely tie the hands of any administrative body. When a public utility by rule of court is enabled to throw its books down in front of the Public [fol. 34] Utilities Commission of the State of Ohio and say to it, "You must accept the figures shown by these books unless and until you have proven them to be untrue," just then the keys to the Public Utilities Commission may as well be turned over to the public utilities. It would seem, in the contention for such a holding, that the consumer is lost sight of entirely.

It must be remembered that while public utilities are entitled to a fair and reasonable rate of income, based upon a fair and reasonable valuation of their properties, the consumer is at the same time entitled to their product at a fair and reasonable price, to be arrived at by the employment of fair and reasonable means.

The Public Utilities Commission is the arbiter between producer and consumer, and it has fulfilled the purpose of its creation when it treats both fairly.

The consumer is concerned with the continued existence of a producer who affords to him the product of a public utility at a price that is fair and reasonable. Incidentally, he should not, and, so far as the court knows, does not, object to being indirectly assessed in a reasonable amount expended in good faith to assure that continued existence, but that does not mean that he is obliged to pay any amount that the producer sees fit to place on his books.

The Commission found from the testimony that the new business obtained by the Gas Company in Lima did not warrant the expenditure of $12,000 per year for new business—nor the half of it. Counsel have not pointed us to that part of the record showing that it has competition. In the absence of a showing of competition, which the Gas Company undoubtedly would have shown had it been the fact, the Commission had the right to assume that there was no competition, and the fact that there was no competition was a fact which it had a right to take into consideration in determining the amount it would allow. It not being shown that there was competition, the case of Con- [fol. 35] solidated Gas Co. v. Newton, 267 Fed., 231, is not in point.

The effect of the holding in the cases of Brooklyn Borough Gas Co. v. Prendergast, 16 Fed. (2d), 615, Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Co., 11 Fed. (2d), 319, and Citizens Gas Co. v. Public Service Comm. of Missouri, 8 Fed. (2d), 632, 634, is simply to criticize the different administrative bodies for assuming to manage the public utilities involved.

All these decisions are in jurisdictions outside of Ohio and involve a different statutory set-up, and, while we respect these decisions as emanating from the very ablest jurists, we do not feel bound by them unless they are attuned to our statutory law.

It is a matter of common sense, as well as law, that the members of the Public Utilities Commission of Ohio cannot substitute themselves as managers of the Gas Company, or dictate its policies, and in their finding they expressly disclaim any such intention. Of course such disclaimer would amount to nothing if their action was so grossly arbitrary as to indicate to an unbiased mind that they were assuming to manage the Gas Company and dictate its policies.

The case of Ohio Utilities Co. v. Public Utilities Commission, 267 U. S., 359, 69 L. Ed., 656, 45 S. Ct., 259, is cited by counsel as bearing upon several questions involved in this case. It is insisted that this case has particular application to this item of new business. This is an Ohio case, and we follow it without hesitation. We quote the syllabus in full, as reported in 69 Law Ed.:

"1. Reproduction value of the property of a public utility for rate-making purposes is not a matter of outlay, but of estimate; and should include a reasonable allowance for organization and other overhead charges that necessarily would be incurred in reproducing the utility.

[fol. 36] "2. An item of interest included in the engineer's estimate of the reproduction value of a public utility, based on an estimate of the time necessary for construction, and allowance of interest on the estimated cost for one half that time, cannot be reduced by the commission without justification.

"3. In the absence of evidence to the contrary, the commission cannot arbitrarily reduce the estimate of its own

engineers as to the necessary working capital of a public utility for rate-making purposes.

"4. Limiting a public utility to a return of less than 5 per cent upon the value of its property unconstitutionally deprives it of its property without due process of law."

It is well to remember that this decision was rendered by the Supreme Court of the United States at its October Term, 1924.

This case does not directly touch the question of allowance for new business, and we may say in passing that no case is cited wherein the question as it arises in this case is treated. The case last referred to simply makes plain the rule that the Commission cannot act arbitrarily.

The case of Consolidated Gas Co. v. Newton, supra, is the nearest case in point. We quote the syllabus and part of the dictum, viz:

"The cost of a department of a gas company for the promotion of the sale of gas, and gas using machines and appliances *held* a legitimate item of the expense of distribution."

At page 353, under the head of "Distribution Expenses," sub-head "Promotion Expense for Gas Appliances and Gas Utilization," the court says:

"These items include the cost of maintaining these departments which the company organized some years ago to push the sale of gas and of machines to burn gas. Their propriety is challenged largely because the sales have not increased much. The truth appears to be that the con-[fol. 37] stantly increasing use of electricity for illumination has driven out gas more and more, until to hold its sales plaintiff must promote the use of gas for heating and cooking * * *. Advertisement, when not pushed to the useless extreme which competition too often engenders, is a necessary function. In its proper sense it means, not the creation of a factitious demand by the familiar process of repeated suggestion, but genuine information in such form as to reach the public."

In this field a reasonable price for gas was charged. There was competition. The company maintained and had

been maintaining for some years a separate department for the exercise of this function. We have no such state of facts in this case. The Lima field is small. There is no competition. The price charged for a mixed gas of low B. T. U. content is almost prohibitive. All these facts were known to the Commission, and it refused to accept the figures produced by the Gas Company without some further proof as to their legitimacy.

Under all the facts and circumstances, we find no prejudicial error in the action of the Commission in this regard.

The difference in the amount of allowances for commercial expenses and distribution expense made by the Commission, and that claimed by the Gas Company, was brought about by the per customer method of allocation, which we have hereinbefore found to be fair. The Gas Company claims that it loses 9 per cent of all the gas it sells. The Commission went into the integrity of this claim, and made a finding that the Gas Company has considerable more mains and lines than is necessary to supply the city of Lima, and allowed 7 per cent., stating:

"This reduction of 2 per cent. in leakage is reflected in a corresponding reduction in the cost of gas sold which appears in the operating statistics * * *."

[fol. 38] The Gas Company contends that this finding of the Commission violates the case of Brooklyn Union Gas Co. v. Prendergast, 7 Fed. (2d), 628.

We find that the twenty-first paragraph of the syllabus in that case announces a general rule, viz:

"Unaccounted for gas, due to leakage, condensation, expansion, contraction, etc., should be allowed for on basis of experience of the company, and not at an arbitrary figure."

No fault can be found with this rule, where the integrity of the item is not attacked.

We further find, sixteenth paragraph of the syllabus, that the court may consider the testimony of the gas company's experts in the light of cross-examination.

That any gas company should lose almost one-tenth of its product by leakage, condensation, expansion, contraction, etc., is so unreasonable on its face as to warrant investiga-

tion. From the record in this case, we find that the allowance of 7 per cent. is fair and reasonable.

The Gas Company claims that anything less than 8 per cent. net income is confiscatory in its case, for the reason that its capital obtained from sale of bonds costs it 7.07 per cent. and from sale of preferred stock 8 per cent.

Just how far can a public utility be encouraged in paying a high price for its money?

It appeals to this court that any concern that loses almost ten per cent. of its out-put, and at the same time pays almost eight per cent. for its money, is headed for the rocks.

We are not denying a reasonable amount for financing. In just one Ohio case do we find where an allowance was made for money paid for the use of money, and that was the case of Ohio Utilities Co. v. Public Utilities Commission supra, wherein the court held that in arriving at reproduction value an item of interest included in the engi- [fol. 39] neer's estimate, based on an estimated length of time necessary for construction and an allowance of interest (6 per cent.) on the estimated cost for one-half of that time, cannot be reduced by the Commission without justification.

This as a matter of fact was an allowance of 3 per cent. for full time.

After reconciling arithmetical errors and considering discrepancies, the Commission arrived at an average net rate of about 6 per cent. per annum. While there are some irregularities in some of the findings and rulings of the Commission, they are not of such character as to warrant a disturbance of their order.

We come now to the consideration of the Kenton case, No. 24105.

This case will be treated briefly, as practically all the questions raised in this case were passed on in the Lima case, No. 24104. It was on this account that they were submitted together.

On July 16, 1929, the city council of Kenton passed an ordinance fixing the rates to be charged by the Gas Company within the city of Kenton for a period of two years from and after August 16, 1929. The Gas Company electing to collect the rates in effect prior to the passage of the ordinance, pending the appeal, gave bond to guarantee repayment of any excess rates that might finally be determined to have been collected by it.

The West Ohio Gas Company purchased natural gas from the Ohio Fuel Gas Company under a contract calling for a purchase price of 55 cents per M c. f. This gas is then distributed to consumers in the city of Kenton.

The Commission fixed the sum of $189,844.81 as the value of the Gas Company's property to be used as a rate base for the two year period of the ordinance, as of a date certain, to wit, August 1, 1929. This valuation can not now [fol. 40] be disturbed, nor can the gate rate of 55 cents be departed from.

On March 10, 1933, the Commission found that the rates fixed by the Kenton ordinance were insufficient, unjust and unreasonable, and it fixed the rates to be charged in the city of Kenton during the ordinance period as follows:

"400 cubic feet of gas or less used per month $1.00
"Next 2600 cubic feet used per month ..... 95¢ per thousand cubic feet
"Next 3500 cubic feet used per month ..... 85¢ per thousand cubic feet
"Next 3500 cubic feet used per month ..... 80¢ per thousand cubic feet
"Over 10,000 cubic feet used per month ..... 75¢ per thousand cubic feet
"House Heating as defined by Co.'s schedule on file .... 60¢ per thousand cubic feet."

The Commission thereupon ordered the Gas Company to refund, as per the previous arrangement.

It is estimated that the amount to be refunded during the ordinance period will approximate $40,000.

On March 18, 1933, the Gas Company filed its application for rehearing with the Commission, in which application it set out many alleged errors and irregularities which it claimed rendered the Commission's order unlawful. In such application it asked leave to be permitted to show the facts as to its decreased revenues and its net earnings from the service in Kenton for the year 1932 and the current year. On March 22, 1933, the Commission denied the application for rehearing, and on April 1, 1933, the Gas Company filed its petition in error in this court, praying that

the proceedings of the Commission herein be reviewed and reversed.

The period used by the Commission for its computations [fol. 41] was the twelve month period ending August 1, 1929.

The same question of unaccounted for gas arises in this case, the Gas Company claiming 10 per cent. and the Commission allowing 5 per cent.

The Gas Company claimed an allowance for General and Miscellaneous Expense in the sum of $10,979.63. The Commission allowed the sum of $6,556.26. It is noted, however, that the sum of $2,069.00 should have been and was added to this sum allowed by the Commission to cure an error made by the Commission in omitting certain expenses.

This difference was occasioned by the difference in the methods of allocation used and the refusal of the Commission to allow the claim for rate case expense.

For depreciation the same claim was made as in the Lima case.

The Gas Company claims an allowance for Excise Tax $1,226.31. The Commission allowed the sum of $1,144.62, there being a difference of $81.69. This difference is so small as to be of no consequence.

No authority is cited to support this allowance, nor has authority been cited to warrant disallowance. The allowance has been made and we will not disturb it one way or another.

The Gas Company claimed an Income Tax Allowance of $1,809.00. The Commission allowed the sum of $1,751.62; a difference of $57.38.

The total difference between the Gas Company and the Commission on all items amounted to $8,978.42.

On the basis of this difference in operating expense, using the valuation fixed by the Commission, the Commission found that the Gas Company's rate of income was altogether too liberal when the consumer was given consideration.

We have examined the Gas Company's reports and the Commission's tabulations, and we fail to see wherein the Commission has committed grievous error.

[fol. 42] The Commission found the gross revenues of the Gas Company from gas service in Kenton for the year ending August 11, 1929, to be $84,787.36. Total expenses for

such time, deduct $61,497.10. Leaving a net income of $23,290.26. Divided by $189,844.81 produces 12.27 per cent. net income.

The Commission fixed 6 per cent. as a fair net income. Six per cent. of $189,844.81 produced in dollars $11,391, and fixed a rate calculated to scale the net income from 12.27 per cent. to 6 per cent., and in the light of the times this is not error.

We do not find the rates fixed in either of these cases to be unreasonable or unlawful, and the orders of the Public Utilities Commission of Ohio made in each and both cases are hereby affirmed.

Orders affirmed.

Weygandt, C. J., Matthias, Bevis and Zimmerman, JJ., concur.

Wilkin, J., not participating.

[fols. 43 & 43a] Reporter's Certificate to foregoing paper omitted in printing.

[fol. 44] [File endorsement omitted]

IN SUPREME COURT OF OHIO

[Title omitted]

PETITION FOR REHEARING—Filed May 29, 1934

West Ohio Gas Company, plaintiff in error, respectfully petitions the court for a rehearing in the above cause.

In its decision the court has adopted, practically verbatim, the statement of the case and the issues as set forth in the initial brief filed by counsel for the commission. (See Deft. Bf., pp. 1-11.) In so doing it has overlooked the facts that many of the statements therein contained are inaccurate and incorrect as has been shown by references to the record contained in the briefs for the company (Pltf. Reply Bf., pp. 2-16; Pltf. Supp. Reply Bf., pp. 5-53); that the statement is predicated on clerical miscalculations by the commission accountants, which errors were subsequently recognized by

counsel for the commission and corrected by means of agreed tables set up in our reply brief (Pltf. Reply Bf., pp. 18-28); [fol. 45] and that from the statement of the issues by counsel for the commission there was omitted one important and controlling issue raised by the petition in error.

We respectfully submit that this use by the court of counsel's statement of the case and the issues has misled the court as to the facts and the evidence to a material and controlling extent, and has resulted in the court overlooking such issue.

We shall not, of course, reargue this case in this petition for rehearing. We shall merely outline briefly several of the principal things which we believe the court has overlooked or misapprehended. Any one of these, we submit, is sufficient to necessitate the granting of the rehearing prayed for, and to require the reversal of the court's decision. By limiting our petition for rehearing to a pointing out of such principal errors, we do not, however, intend to waive any right we have, either upon a rehearing or in any further appeal of this cause, to discuss not only the points here referred to but also all the other features of the present ruling that we deem untenable. It is our view that the court should have found for the plaintiff in error upon each and every error assigned in the petition in error filed in this case, that the court erred in not so ruling and that upon a rehearing in this case each and all such assignments of error should be decided in favor of plaintiff in error.

[fol. 46]

I

The Court Has Overlooked the Fact That the Action of the Commission Cannot Be Supported by Reliance Upon Reports or Other Documents Not Properly Introduced in Evidence

We turn first to the issues that the court has apparently overlooked entirely.

One of the important assignments of error which the company presented in its petition in error was that there had been a denial of due process of law to the company through the action of the commission in placing in evidence, after the termination of hearings in the cause, certain annual reports of the company, and then refusing the company any oppor-

tunity to meet any issues that might be created through the use of the reports. (Assignment of Error No. 29.) The record shows that the reports were ordered in evidence by the commission long after the hearings closed. This was done by an order dated three days before the rate order was entered, but not served on the company until after the rate order had been served on it. The record further discloses that the company made timely objection to this arbitrary and unlawful procedure, but that the commission refused the company an opportunity to explain, clarify or show the make-up of the figures and information in the reports which the commission attempted to use as a basis for its ignoring tens of thousands of dollars of operating expense. The figures and information were misused and misapplied. Such misapplication is the sole basis of any support for the elimination of much of the actual operating expenses that have been disregarded by the commission. Yet the company never had an opportunity to show the facts.

[fol. 47] This assignment of error was not mentioned in the statement of issues as set forth by counsel for the commission. It was, however, urged by us in our briefs. The decision shows that the court has overlooked the issue and has considered these reports as competent evidence in the cause. This is necessarily true because support for the reductions by the commission in the actual expense for distribution costs, in the actual expense for commercial costs and in part of the actual expense for general and miscellaneous costs, if it can be found at all, must be found in the misuse of figures contained in the annual reports.

The law is clear that under the circumstances as above outlined, the reports are not properly in evidence and any attempted use thereof is a denial of due process of law, rendering the order void. We again call the court's attention to the decisions supporting this principle which we cited and quoted from in our briefs.

United States v. Abilene & Southern Railway Company, 265 U. S. 274 (1924);

Interstate Commerce Commission v. Louisville and Nashville Railroad Company, 227 U. S. 88 (1913);

Crowell v. Benson, 285 U. S. 22 (1932);

The Chicago Junction Case, 264 U. S. 258 (1924);

Northern Pacific Railway v. Department of Public Works, 268 U. S. 39, 44-5 (1925);

Washington ex rel. Oregon R. R. & N. Co. v. Fairchild, 224 U. S. 510, 524-5 (1912);
Ohio Utilities Company v. Public Utilities Commission, 267 U. S. 359 (1925).

We quote a short excerpt from United States v. Abilene & Southern Railway Company, supra. As we stated in our [fol. 48] reply brief, that case is particularly significant here because of the action in this case of the commission in reference to the annual reports of the company. Mr. Justice Brandeis, in holding a legislative order void because of failure to observe the principle heretofore discussed, there said for a unanimous court, pages 286-290:

"The plaintiffs contend that the order is void because it rests upon evidence not legally before the Commission. It is conceded that the finding rests, in part, upon data taken from the annual reports filed with the Commission by the plaintiff carriers pursuant to law; that these reports were not formally put in evidence; that the parts containing the data relied upon were not put in evidence through excerpts; that attention was not otherwise specifically called to them; and that objection to the use of the reports, under these circumstances, was seasonably made by the carriers and was insisted upon. * * *

"* * * a finding without evidence is beyond the power of the Commission. Papers in the Commission's files are not always evidence in a case. New England Divisions Case, 261 U. S., 184, 198, note 19. Nothing can be treated as evidence which is not introduced as such. Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, 91, 93; Chicago Junction Case, 264 U. S. 258. * * *

"* * * The objection to the use of the data contained in the annual reports is not lack of authenticity or untrustworthiness. It is that the carriers were left without notice of the evidence with which they were, in fact, confronted, as later disclosed by the finding made. The requirement that in an adversary proceeding specific reference be made, is essential to the preservation of the substantial rights of the parties.

"* * * The matter improperly treated as evidence may have been an important factor in the conclusions reached by the Commission. The order must, therefore, be held void."

We respectfully submit that a proper determination of this issue alone will require a reversal of the commission rate order involved in this cause.

[fol. 49]

II

The Court Has Not Passed Upon the Question Presented as to Whether the Commission Order, If Valid, Affects Rates for Any Period Beyond That Designated in the Ordinance Appealed From.

This case also presents the issue as to whether, even if a valid rate reduction had been ordered by the commission on a statutory appeal from a municipal rate ordinance, such order could affect or control the rates charged for any period longer than the period designated in the ordinance appealed from. (See Pltf. Orig. Bf., pp. 116-9.) The court has overlooked this issue, which is an important one on which, whether the present decision be reversed or stand, the parties are entitled to a clear decision.

III

The Record in This Case Establishes Conclusively That Under the Rates Fixed by the Commission the Property of the Company Would Be Confiscated During Each Year for Which the Rates Have Been Ordered Effective.

The decision of the court seems to be predicated upon the belief that there was sufficient evidence to justify the commission in disregarding for rate case purposes actual operating costs of rendering service in an amount averaging approximately $71,500 a year for the years 1928 to 1931, both inclusive; that upon disregarding such amount of operating expense the rates fixed by the commission would yield a return upon the rate base fixed by the commission averaging approximately 6% per annum for the years 1928, 1929, 1930 [fol. 50] and 1931; that an average rate of return for those years limited to such amount would be non-confiscatory of the company's property; and that even though the evidence established diminishing earnings over the four-year period, the rates fixed by the commission to yield an alleged 6% average annual return for the four-year period could be assumed to be non-confiscatory for the period subsequent to

1931. We respectfully submit that each of these conclusions is untenable and that in arriving at each such conclusion the court has either overlooked or misapprehended controlling facts shown by the record in the case, or has approved commission action which is not supported by evidence.

A

The Record Does Not Contain Evidence Supporting the Commission in Its Disregard of $71,500 Annual Operating Costs.

The court has held that the commission was warranted under the evidence in ignoring more than $71,500 of the annual operating costs of the company. The amount ignored is approximately 20 per cent of the entire cost of the service. As we understand the opinion, the view of the court on this phase of the case is founded on the assumption that there is evidence to support the action of the commission as to each such elimination, and that the court will not therefore reverse the commission action. In this view the court has lost sight of two controlling factors—first, as to most of the ignored items of expense there is neither any evidence whatsoever, nor any lack of evidence, that warrants or justifies the action of the commission in disregarding the expense, and secondly, even if there were conflicting evidence, due process requires that this court make an indepen-
[fol. 51] dent review of both the law and the facts.

1

The Court has Failed to See that on the Record in this case there is no Justification for Disregarding the Company's Actual Costs of Rendering the Service

The ignored items of expense are of two classes—first, those that represent actual out-of-pocket expenditures made during the year in the rendering of the service; and secondly, those for depreciation and amortization reserve which are partly actually expended for replacements and partly carried in a reserve account to protect the integrity of the investment.

The average amount of the former which the commission has disregarded is $20,500 annually (plus for the period

subsequent to 1931 the increased amount of state excise tax, which is about $5,100 a year). This disregard of actual costs increased the apparent net return on the rate base by over 1% per year. When these costs are added to those taken into account by the commission, the average net earnings of the company for the four years, 1928 to 1931, both inclusive, would be but 4.45% per annum under the commission rates.

In the latter group the average amount disregarded is $51,000 annually. This disregard of expense of operation increased the apparent net return on the rate base by an additional percentage of more than 2½% per year. When this additional amount is considered, average earnings for the four-year period would be less than 2% per annum under the commission rates.

In its seventh syllabus the court has correctly stated the principle of law that the commission in fixing a rate cannot ignore actual costs of operation unless the "integrity of the [fol. 52] entries" of said expenditures is attacked. We submit, however, that in its eighth syllabus the court has misconceived the rule of law applicable when an attack is made upon actual expenditures of the first class above mentioned. The sound rule and the one uniformly laid down by the decisions is that where payments to an affiliated company are not involved, expenditures shown to have been actually made in carrying on the business are prima facie reasonable, and the burden of proving them to be unreasonable rests upon the person or body attacking the expenditure, who must show that there has been fraud or an abuse of managerial discretion in making the expenditure. There is nothing unworkable or unfair in such a rule. It is manifestly a fair one, consonant with justice.

Southwestern Bell Telephone Company v. Public Service Commission, 262 U. S. 276, 288-9 (1923);

Banton v. Belt Line Railway, 268 U. S. 413, 421-2 (1925);

Atchison, Topeka & Santa Fe Railway Company v. United States, 284 U. S. 248, 262 (1932);

Chesapeake & Potomac Telephone Co. v. Manning, 186 U. S. 238, 248 (1902);

Public Utilities Commission v. Springfield Gas & Electric Co., 291 Ill. 209, 234; 125 N. E. 891, 901 (1919);

People v. Stevens, 197 N. Y. 1; 90 N. E. 60, 63, (1909);
Columbus Gas Light Co. v. Public Service Com., 193 Ind. 399, 404; 140 N. E. 538, 540 (1923);
Denver Union Stock Yards Co. v. U. S., 57 F (2d) 735 (1932);
Re Milwaukee Electric Ry. & Light Co., P. U. R. 1931E, 289, 296 (1931).

[fol. 53] The correctness of the rule as above stated seems to be clearly recognized by the United States Supreme Court in recent decisions. See, for example, the statements of the court in distinguishing a situation where transactions with an affiliated company were involved.

The Dayton Power and Light Company v. The Public Utilities Commission of Ohio, 54 Sup-Ct. Rep. 647, 650 (1934).

But even if the view expressed by the court in its eighth syllabus were the correct one, the decision arrived at would not be warranted under the evidence in the case at bar. The inescapable fact here is, as a study of the evidence will disclose, that as to most of the items of operating expense disregarded by the commission there was no challenge of the expenditure except in the commission order itself. No evidence was introduced to overcome the prima facie reasonableness of the expenditure or to question its allowance. In its decision the court has entirely lost sight of the fact that this is true of the items of gas produced and purchased, distribution expense, commercial expense, new business expense and general and miscellaneous expense. Yet, the commission ignored more than $80,000 of such actual expenses for the four years that it considered.

As to the class of expenditures first referred to under this heading, we submit, that a study of the record shows indisputably that when the hearings closed there was no evidence in the record by which disregard of any part of such operating costs could be supported. The company had shown in detail its actual cost of service. The expert for the city had been given, and availed himself of, the opportunity to examine fully the accounts and records of the company. Neither he nor anyone else for the city or the commission introduced any evidence whatsoever that would support the [fol. 54] reductions the commission assumed to make. His

analysis as to expense checked closely with the information submitted by the company comptroller. We call the court's attention to the analysis of the evidence as to operating cost which is set forth on pages 17-22 of our original brief. We urge the court, if it has any doubt on this matter, to examine the exhibits and testimony as to operating costs. There was no evidence introduced on the subject other than that above referred to. During the hearings the commission introduced no evidence whatsoever touching the subject.

We desire to outline briefly the record situation as to each of these items of expense in order to focus the court's attention on the evidentiary situation that exists.

a. Gas Produced and Purchased.—The court has assumed in its opinion that in the hearing before the commission there was an attack on "the integrity of the item" of unaccounted for gas. This assumption is in error. No challenge was there made as to the reasonableness of the actual experience of the company in its unaccounted for gas losses. The company showed its actual expenditures for gas, and no evidence attacking the item was produced by either the city or the commission. If any challenge had been made of that item, it could readily have been established that the amount of the loss was not only not excessive, but was in fact less than an amount which under sound and economical operating practice would justify the additional expenditures which would be required in order to make an attempt (likely futile) to reduce the amount of such loss. The first intimation which the company had of any challenge of the item was the order itself. A petition for rehearing was denied.

[fol. 55] The court's assumption on page 23 of its opinion that the percentage of loss of nine per cent. is "so unreasonable on its face as to warrant investigation," is wholly out of line with the general experience of the gas distribution industry.

b. Distribution and Commercial Expense.—The reduction of these annual expenses by more than $7,200 a year has not a vestige of support except through the misuse made by the commission of data contained in the annual reports unlawfully relied upon by the commission. The court in approving the attempted reductions must have lost sight of the undisputable fact that these expenses are almost

wholly direct expenses incurred in Lima and do not involve any problem of allocations whatsoever. (Company Exhibit 104; Pltf. Orig. Bf., pp. 65-70; Pltf. Reply Bf., pp. 42-6.)

c. General and Miscellaneous Expense.—There is no basis for the method of allocation used by the commission except it be found through the use of the annual reports of the company which were put in evidence by the commission after the hearings ended. The allocation method followed by the company is not only one which harmonizes with the nature of this expense, but was not challenged by any evidence introduced in the case and was in fact adopted by the expert witness for the city of Lima who was in charge of the examination of the company books and who testified in the case.

d. New Business Expense.—The court has justified the action of the commission in eliminating more than $7,000 per year of the company's expenditures for new business upon the ground that there is no showing in the record that the company had competition in its business. On this basis it attempts to distinguish existing authority. We [fol. 56] submit that the conclusion of the court is unwarranted. The record shows plainly the necessity of the company making strenuous effort to preserve and increase its business. As the company comptroller trenchantly expressed the fact, "We have got to fight to keep what we have got and daily try to increase our gas sales to our customers." In the period here involved, industrial sales were increased from 9,941,200 cubic feet in 1927 to 32,320,000 cubic feet in 1931, and house heating increased from 2,698,800 cubic feet in 1927 to 12,489,200 cubic feet and 10,409,000 cubic feet in 1930 and 1931, respectively. (See Transcript, pp. 1034-41; 1072; 1078; 1099; 1136-8; 1146 and 1182-3; Company Exhibit 104, pp. 11 and 15; City Exhibit A-2 prepared by company comptroller at request of counsel for the city.) Not only is competition shown by the evidence, but is such a commonly known fact that such products as coal oil, coal and electricity as well as gas are used for domestic cooking, that such products as oil and coal as well as gas are used for house heating, and that such products as coal, oil and electricity as well as gas are used in industrial heating processes, that we submit that, if competition were an essential to the allowance of the expense,

the court is bound to take judicial notice of the fact that any gas company operates in a competitive field.

e. Increased Excise Tax.—The company on page 98 of its original brief and on pages 56-7 of its reply brief asserted its position that the commission could not properly disregard more than $5,000 of actual increased expenses for excise taxes which were shown by the evidence to be incurred for 1932 and subsequent years. The court in stating "the 1% increase in excise tax is not given serious consideration by the gas company" has obviously overlooked [fol. 57] the fact as to the company's position on this matter, and its strenuous insistence that the item must be taken into account. That item of expense alone reduces the net earnings of the company ¼th of 1% per year.

We turn now to consider the court's ruling on an annual depreciation allowance and an allowance for the amortization of the company's transmission main.

a. Depreciation Allowance.—We shall not, in this petition for rehearing, argue the point whether, in the light of all the evidence, the court should have required the commission to take into account as an annual depreciation reserve allowance the full amount that was claimed by the company. We do desire to point out that an allowance of less than the $35,579 which the city's evidence supported is wholly contrary to any evidence in the case; and under the evidence is clearly too low. The chief witness for the city (who claimed to have made an exhaustive study of the matter) testified that $35,579 a year was the proper allowance. There is much in the record to show that this amount is too low. There is nothing whatsoever in the record upon which to predicate the approval of anything less. The evidence of the city's witness shows that the actual experience of the company in making retirements during the seven years of its existence was at the rate of nine-tenths of one per cent. a year on the cost of reproduction new as fixed by the commission in this case. Translated into dollars, this testimony is that the average annual retirements of the company over the seven-year period would equal approximately $21,350. (See commission valuation order; Transcript IV, item 17.) This leaves but $14,000 a year, approximately, to protect the diminutions of the investment through accrued depreciation in the property not yet retired.

[fol. 58] The commission engineers found that such accrued depreciation in the property devoted to Lima service was at the time of their inspection in excess of $491,000. (Transcript IV, item 17.) Even if it be assumed that retirements would continue, and had always been, at as low an average rate as was the experience during the seven years of company history to 1931, more than thirty-five years would be required, under the depreciation rate advocated by the city's witness, to accumulate sufficient moneys to offset the accrued depreciation which the commission has found to exist in the property now. With the same assumptions, there would, under the rate fixed by the commission in its order, be only about $3,000 a year to apply toward offsetting accrued depreciation in property in service. At this rate it would take more than 160 years for the company to secure a sum of money equal to the amount by which the commission has reduced its investment because of alleged accrued depreciation now existing. We submit that, in sustaining the commission action as to the depreciation allowance, the court not only has lost sight of the fact that there is no evidence to support the limiting of the allowance to the inadequate sum of $24,518, but also has been unaware that the actual situation shown by the evidence as the one that would exist under such a limited allowance, proves conclusively that the allowance is hopelessly insufficient. On rehearing the court should at least find that on the present record any allowance below $35,579 a year is arbitrary and invalid.

b. Allowance for Amortization.—The court's ruling as to amortization appears to have been based on two things. First, that it had been decided in the case of Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio, 127 Oh. St. 169; 187 N. E. 7 (1933), that the Ohio statute did not permit the commission to make an allowance for [fol. 59] amortization; and, secondly, that it was unfair to permit the amortization allowance if the value of the property was included in the rate base.

Since the decision in this case, the United States Supreme Court has ruled in Columbus Gas and Fuel Company v. The Public Utilities Commission of Ohio (decided May 21, 1934) that regardless of the interpretation which this court has placed on the Ohio statute, the federal constitution requires that amortization be allowed in a situation

where confiscation would result if such allowance were not made. This decision, we submit, should cause the court to reconsider its ruling in this case and to redetermine whether the refusal of the commission to allow for this item renders its order invalid under the fourteenth amendment. We submit that it does, in view of the situation to which we shall now call the court's further attention.

Statements in the opinion show that the court felt that the company was seeking to amortize the property through operating expense and also include that same property in the rate base on which it insisted it was entitled to a return. If such were the situation, the court's criticism would be entirely sound. But that is not the case. The evidence establishes that in the past the company has never had sufficient earnings to enable it to amortize any part of the transmission main except by taking a portion of its inadequate earnings for that purpose. (Company Exhibits 102 and 103.) Such reserve as the company did set up was made possible by a sacrifice by the owners of the company of a part of their already grossly inadequate return. It was not a capital contribution by the rate payers. Nevertheless, in valuing the property the commission reduced the transmission main valuation by $132,000 upon the sole theory that an order authorizing amortization had been made. [fol. 60] Through this reduction, $132,000 of the value of the property devoted to the public service was arbitrarily taken out of the rate base. In this situation, fairness and equity requires the allowing of the amortization item until $132,000 has been returned to the owners of the property. It would be a gross denial of justice to the investors in the property if the rates of the company were reduced prior to the time that the rate payers have contributed, in addition to a compensatory return, an amount which with interest equals the $132,000 by which the valuation of the company's property has been reduced. The equity of the case is all on the side of the company. We submit further that the requirements of the fourteenth amendment necessitate the making of the allowance under the situation shown by the evidence here.

We believe the court has overlooked these facts and that it should, in view of them and in the light of the recent decision in the Columbus case, give further consideration to this item.

2

The Court has not Afforded the Company that Independent Judicial Review of the Facts which Due Process Requires

The fourteenth amendment of the federal constitution requires the court, in reviewing a rate order made by an administrative body, to make an independent review of both the law and the facts and to reach an independent judgment based on such review.

This principle was succinctly expressed in Ohio Valley Water Company v. Ben Avon Borough, 253 U. S. 287 (1920) where the court said, p. 289:

"In all such cases," (rate fixing orders) "if the owner claims confiscation of his property will result, the State [fol. 61] must provide a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts; otherwise the order is void because in conflict with the due process clause, Fourteenth Amendment."

The rule has since been reiterated and consistently applied by that court.

Bluefield Company v. Public Service Commission, 262 U. S. 679, 689 (1923);

Prendergast v. New York Telephone Company, 262 U. S. 43, 50 (1923);

Lehigh Valley R. R. v. Commissioners, 278 U. S. 24, 36 (1928);

United Railways & Electric Company of Baltimore v. West, et al. 280 U. S. 234, 251 (1930);

Crowell v. Benson, 285 U. S. 22, 60 (1932).

We think it is clear from the opinion that such an independent review and determination of the facts was not made by the court in this case, and we respectfully submit that this constitutional guaranty has not been complied with. For this reason, there should be a reconsideration of this case.

IV

In Upholding the Refusal of the Commission to Permit the Company to Show the Results of 1932 Operations, the

Court Has Overlooked the Requisites of Due Process in Rate Regulation

On pages 13 and 14 of its opinion the court justifies the refusal of the commission to allow the company to show the effect of 1932 operations upon the ground:

"To have considered the year 1932 would have required the Commission to re-vamp all the work it had done, and [fol. 62] we do not think it abused its administrative discretion in refusing the application."

In this ruling the court has overlooked controlling legal principles. Even if there had been any prospect that the rehearing requested might have been long, it would not have justified the commission in denying the rehearing when the same was required by essential demands of justice.

Atchison, Topeka & Santa Fe Railway Company v. United States, 284 U. S. 248 (1932).

By petition for rehearing filed within eight days after the entry date of the rate order, the company asked leave to show the results of its operations for the year 1932 which results were not available when the hearings in this cause ended. The making of such a showing becomes essential because of the nature of the commission order and the commission's action in refusing to take into account the fact, which the record discloses, that earnings had been greatly diminished under the existing economic situation. The petition for rehearing set forth the fact that the business of the company had been further adversely affected by such economic conditions, and that the company would show that its earnings for the year were far below the average of the four years considered by the commission.

As a result of this petition it became the legal duty of the commission to receive the evidence. It must be apparent that when the figures were before the commission the work of revising its averages would not have been an extended task and the recognition that revision would have been required must also be a recognition that the rates already fixed could not have been constitutionally extended to 1932 operations if the facts as to earnings for that year were established.

[fol. 63] We submit that on this phase of the case the court has erred and that it should re-examine the issue.

V.

The Court Has Failed to See That the Data in the Record Proves That Under the Commission Rate Order the Company Would Not Have Earned on the Rate Base a Return Even Approaching 6%; and That to Limit the Return to Even 6% Would Be Confiscation

In its findings that the rate of return which the company would receive for the years 1928, 1929, 1930 and 1931 on the rate base fixed by the commission would average about six per centum per annum under the rates fixed by the commission, and that such a rate of return would be a non-confiscatory one, the court has lost sight of what the record shows, of the effect of the errors in calculations by the commission accountants, and of the principles of law governing the return necessary to be allowed if confiscation is to be avoided. We shall present in outline form a summation of certain important factors that must have been overlooked.

1. When errors in calculation made by the commission accountants are corrected, the average annual earnings of the company from Lima service for the years 1928, 1929, 1930 and 1931 would, under the rates approved, be but 5.45% on the rate base instead of 6%, even after the average operating expenses have been reduced by the $71,500 per year reduction made by the commission.

2. The spreading of the rate case expense over a six-year instead of a five-year period would not increase the return to more than 5.5% per year for said four years.

[fol. 64] 3. The average annual net earnings for the four years, 1928 to 1931, both inclusive, are not a measure of the net earnings for the year 1932 and subsequently, and such fact is plainly demonstrated by the record. The rate fixed by the commission, even if it were sustainable for the four years prior to 1932, could only be deemed to produce a fair return for 1932 upon the assumption that the situation in 1932 would be the same as the average of the four preceding years. The record shows this assumption to be wholly unwarranted. It shows that earnings for the year 1928 were 50% higher than those for 1931, and that earnings for the years 1929 and 1930 were approximately

25% higher than those for the year 1931. 1931 earnings were, therefore, far below the four-year average. In view of the marked downward trend in economic conditions during the year 1932 and at least a part of the year 1933, a fact of which courts take judicial notice (Atchison, Topeka & Santa Fe Railway Company v. United States, 284 U. S. 248 (1932), it could not reasonably be assumed that the earnings of the company during 1932 would equal an average based on four years, three of which were, relatively speaking, the "fat years" referred to by the court. The fact was that earnings for 1932 were substantially below those for 1931, and this the company offered to show in its petition for rehearing.

When these facts are kept in mind, it is apparent that the rate fixed by the commission could not in any event be lawfully forced upon the company for the year 1932 and subsequently.

Lindheimer v. Illinois Bell Telephone Company, 54 Sup. Ct. R. 658 (1934);

Smith v. Illinois Bell Telephone Company, 282 U. S. 133 (1930);

Atchison, Topeka & Santa Fe Railway Company v. U. S., 284 U. S. 248 (1932);

[fol. 65] Galveston Electric Company v. Galveston, 258 U. S. 388, 400-1 (1922);

Banton v. Belt Line Railway, 268 U. S. 413, 418 (1925).

4. This controversy involves the fixing of rates for five years that have passed. The question as to what rate of return was necessary to avoid confiscation must be determined for each such past year in the light of then existing conditions and cannot for such years be based upon a determination of what might or might not be a non-confiscatory return for the present time. The determination of what may be an adequate return for today does not determine the question of the return which the company was entitled to earn during such years as 1928, 1929, 1930 or even 1931.

Smith v. Illinois Bell Telephone Company, 282 U. S. 133 (1930);

Lindheimer v. Illinois Bell Telephone Company, 54 Sup. Ct. R. 658 (1934).

This important and controlling fact the court has obviously overlooked.

5. An adequate rate of return must be determined from all the facts and circumstances shown in the particular case. It has been shown in this case that gas utility business in Lima had never been financially successful and, consequently, the rate of return that must be allowed to avoid confiscation would be a substanially higher one than the return necessary in the case of a financially strong company, such as, for example, the Illinois Bell Telephone Company, and many of the other utilities that have recently presented rate controversies to the courts.

In view of the facts that only about three years before the [fol. 66] rate case was commenced the West Ohio Gas Company was organized, and that its bonds and preferred stocks were then marketed under authorization of and at prices fixed by the commission, it is apparent that the amount demanded by the public before it would invest money in the enterprise is a fair measure of the rate that must be paid to attract capital to this enterprise, and that the annual return required in order to avoid confiscation must be something higher thn the 7.07% which capital obtained through the sale of senior securities has cost the company.

McCardle v. Indianapolis Water Company, 272 U. S. 400, 419 (1926);

United Railways & Electric Company of Baltimore v. West, et al., 280 U. S. 234, 251-2 (1930);

Bluefield Company v. Public Service Commission, 262 U. S. 679, 693-5 (1923).

The court has obviously been confused in dealing with the matter of rate of return, as appears from its reliance on, and discussion on pages 23 and 24 of its opinion of, the case of Ohio Utilities Company v. Public Utilities Commission, 267 U. S. 359 (1925). The portion of the case there referred to by the court does not touch the subject of rate of return, but considers the question of an adequate allowance for the undistributed overhead item of "interest during construction" to be taken into account in estimating the cost to reproduce the property.

We respectfully submit that when the factors and legal principles above outlined are considered, it becomes apparent that the rate fixed by the commission and approved by this court in its decision was clearly confiscatory during

[fol. 67] each and every year for which it has been ordered to be made effective.

Conclusion

We trust that the court will give this petition for rehearing most careful consideration. We think it is inescapably plain from the evidence in the case and from the analysis thereof contained in the briefs we have heretofore filed for the company that the commission order, if upheld, will destroy the ability of the company to continue to render efficient public service, and will confiscate not only the property of the company but the moneys of the many investors in such property.

We respectfully urge that the petition for rehearing be granted, that the court give further consideration to the facts established and the legal principles involved, and that it thereafter find that the rate order of the commission appealed from in this case would cause the confiscation of the company's property and cannot be sustained.

Respectfully submitted, Charles C. Marshall, Harry O. Bentley, Cooke, Sullivan & Ricks, Attorneys for Plaintiff in Error. Edmond W. Hebel, of Counsel.

[fol. 68] In Supreme Court of Ohio

No. 24104

(Title)

West Ohio Gas Company, a Corporation Organized and Existing Under the Laws of the State of Ohio,

vs.

The Public Utilities Commission of Ohio (City of Lima)

Action: Error to the Public Utilities Commission of Ohio.

Attorneys: For plaintiff in Error, Marshall & Guild, Columbus; H. O. Bentley, Lima; Cooke, Sullivan & Ricks, Chicago, Ill.

For defendant in error, John W. Bricker, Attorney General; Donald C. Power, Columbus; Melvin C. Light, Elmer Welty, Lima, Ohio.

DOCKET AND JOURNAL ENTRIES

Memoranda of Pleadings, etc., Filed, Writs Issued, Judgments, Orders, and Decrees

1933

April 1. Petition in Error (1) filed. Waiver of Summons and entry of appearance filed.

April 1. Statement of interested parties filed.

April 1. Application for stay of execution filed. Notice and proof of service filed.

April 7. Order allowing stay of execution upon giving bond in sum of $20,000 to approval of Clerk of this Court and upon further consideration that all moneys collected on and after April 10, 1933, be impounded on or before the tenth day of the succeeding calendar month. Carl V. Weygandt, Chief Justice. Journal 33, page 151.

April 7. Bond in sum of $20,000 on United States Fidelity & Guaranty Company of Baltimore, Maryland, approved and filed.

April 17. Complete file from P. U. C. O. filed.

May 1. Plaintiff's printed brief and affidavit of service filed. 5-2-33, Proof of service filed.

May 27. Defendant's printed brief on merits and affidavit of service filed. 5-29-33, Proof of service filed.

May 27. Additional certificate and nunc pro tunc order of P. U. C. O. filed.

May 31. Motion by Plaintiff in Error to strike the nunc pro tunc Order of the Defendant in Error from the record.

June 17. Plaintiff's printed reply brief and affidavit of service filed. 6-20-33, Proof of service filed.

[fol. 69]

1934

January 25. Defendant's supplemental brief (printed) filed. 1-26-34, Proof of service filed.

February 7. Plaintiff's printed supplemental brief and affidavit of service filed. 2-9-34, Proof of service filed.

May 16. Order affirmed. Journal 33, page 461.
May 29. Application for rehearing and notice to Reporter and acknowledgment filed.
June 6. Rehearing denied. Journal 33, page 473.
June 15. Petition for appeal, assignment of errors and prayer for reversal filed.
June 15. Statement of appellant as to grounds of jurisdiction filed.
June 15. Order allowing appeal filed.
June 15. Appeal Bond, West Ohio Gas Company as principal and United States Fidelity and Guaranty Company as surety, approved and filed (sum $1,000).
June 15. Citation and proof of service filed.
June 15. Notice and proof of service, as required by Rule 12, paragraph 2 of the Rules of United States Supreme Court, filed.
June 20. Mandate issued.
June 29. Order of P. U. C. O. received and filed.
July 2. Petition for order transmitting original exhibits filed.
July 2. Præcipe for transcript of record and acknowledgment filed.
July 6. Order transmitting original exhibits filed.
July 11. Præcipe of appellee and acknowledgment of service filed.
July 18. Supplemental præcipe of appellant and proof of service filed.

Journal Entries

Order Staying Execution

April 7, 1934.—Order on application for stay of execution. This cause came on to be heard upon the application of plaintiff in error for an order to stay execution of the final order of the Public Utilities Commission of Ohio herein complained of, and was argued and submitted to the Chief Justice of this Court, the Court being in vacation. On consideration whereof, being fully advised in the premises, it is hereby ordered that said application be allowed and the order of the Public Utilities Commission com-

plained of is hereby stayed until the further order of this Court upon the plaintiff in error giving an undertaking payable to the State of Ohio in the sum of $20,000.00 with surety to the satisfaction of the Clerk of this Court, conditioned according to law, and upon the further condition that all moneys collected on and after April 10, 1933, from the consumers affected by the said final order in excess of the amounts authorized under the rates prescribed in said final order of the Public Utilities Commission herein complained of be impounded and deposited in equal amounts in the Huntington National Bank and Ohio National Bank, both of Columbus, Ohio, there to remain until the further order of this court, such excess moneys so collected during each calendar month to be impounded and deposited on [fol. 70] — before the 10th day of the succeeding calendar month. It is further ordered that the plaintiff in error impound and deposit, in accordance with the above provisions, said moneys collected, until the further order of this Court. Carl V. Weygandt, Chief Justice. Journal 33, page 151.

JUDGMENT

May 16, 1934.—Error to the Public Utilities Commission of Ohio. This cause came on to be heard upon the transcript of the record of the Public Utilities Commission of Ohio and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the order of the said Public Utilities Commission of Ohio be, and the same is hereby, affirmed for the reasons stated in the opinion filed in this case; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at $—. Ordered, that a special mandate be sent to the Public Utilities Commission of Ohio, to carry this judgment into execution. Journal 33, page 461.

ORDER DENYING REHEARING

June 6, 1934.—It is ordered by the Court that a rehearing herein be, and the same hereby is, denied. Journal 33, page 473.

[fol. 71] Clerk's certificate to foregoing paper omitted in printing.

[fol. 72] IN SUPREME COURT OF OHIO

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 15, 1934

Petition for Appeal

To Honorable Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio:

Considering itself aggrieved by the final decision of the Supreme Court of Ohio in the above entitled cause, West Ohio Gas Company, plaintiff in error therein and appellant in this appeal from said decision, hereby prays that an appeal may be allowed to the Supreme Court of the United States for the reasons specified in the assignment of errors hereinafter set out.

The case is one in which the validity of a final rate order of The Public Utilities Commission of Ohio, made and entered on March 11, 1933, and fixing rates to be charged by said appellant, West Ohio Gas Company, for gas utility service rendered within the city of Lima, Ohio for a period of five years commencing on or about April 19, 1928, is challenged upon the grounds that the rates fixed by the [fol. 73] said final order were unlawful and unreasonable and confiscatory of the property of said appellant devoted to the public service, and, therefore, said final order impinges upon rights guaranteed said appellant by, and is invalid under, section one of the fourteenth amendment to the constitution of the United States, and that because said final order is not founded upon the evidence, because it disregards the evidence and because it is based upon matters not properly in evidence, said appellant has been denied the due process of law and equal protection of the laws to which said appellant is entitled under section one of the fourteenth amendment to the constitution of the United States.

And said appellant, West Ohio Gas Company, desires

that said appeal shall operate as a supersedeas, and therefore prays that an order may be made fixing the amount of security which appellant shall give and furnish upon such appeal, and that upon giving such security the judgment of the Supreme Court of Ohio and the execution thereof shall be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

Assignment of Errors

And said appellant, West Ohio Gas Company, assigns the following errors in the record and proceedings in said cause:

1. The Supreme Court of Ohio erred in that it held and found that the following rates, to-wit:

400 cubic feet or less used per month	$1.00
Next 9,600 cubic feet used per month, per thousand cubic feet	.95
Over 10,0000 cubic feet used per month, per thousand cubic feet	.75
Penalty for non-payment of bill within ten days after receipt of bill, $.05 per thousand cubic feet	

fixed and determined by The Public Utilities Commission [fol. 74] of Ohio, defendant in error in the above entitled cause and appellee in this appeal from the decision therein, in its final order dated March 11, 1933 (said order being hereinafter for convenience generally referred to as the "final order"), as the rates to be charged by appellant for gas utility service rendered within the city of Lima, Ohio (said utility service being hereinafter for convenience generally referred to as "Lima service"), during the five-year period from and after on or about April 19, 1928 (said period being hereinafter for convenience generally referred to as the "ordinance period"), are reasonable, lawful and non-confiscatory rates imposed upon appellant as charges for said Lima service during said ordinance period, that said rates produced revenues sufficient to enable appellant during the ordinance period to produce and distribute gas to consumers within the city of Lima, Ohio at such a price as would enable appellant to conduct its business, pay the necessary and reasonable operating costs thereof and earn a fair, reasonable and non-confiscatory rate of return upon

the fair value of the property devoted to Lima service, and that the establishment thereof for said ordinance period would not deprive appellant of its property without due process of law and would not deny to appellant the equal protection of the laws, contrary to the provisions of section one of the fourteenth amendment to the constitution of the United States.

2. The Supreme Court of Ohio erred in that it did not find that even under the existing rates which are being charged under tariffs on file with appellee, appellant is obtaining from Lima service less than a compensatory return upon the fair value of its property devoted to Lima service, and that it has obtained less than a compensatory return from said service during the period for which the final order of appellee was made effective, and each and every year thereof.

[fol. 75] 3. The Supreme Court of Ohio erred in upholding the action of appellee in ordering appellant to refund to its Lima customers, part of the moneys collected from them for Lima service during any and all of the years covered by the ordinance period.

4. The Supreme Court of Ohio erred in that it upheld the action of appellee in relying, in the making of its final order, upon data taken from annual reports for the years 1928, 1929, 1930 and 1931 filed by appellant with appellee, which reports were not properly introduced in evidence in said cause but were put in evidence after the close of the hearings therein, both without the knowledge or consent of appellant and without affording appellant any opportunity (although timely request therefor was made by appellant) to explain, clarify and show the misuse made by appellee of the information contained in said annual reports.

5. The Supreme Court of Ohio erred in that it upheld the action of appellee in refusing to put in evidence, or to give appellant an opportunity to put in evidence, the annual report of appellant that was filed with appellee for the year 1932.

6. The Supreme Court of Ohio erred in that it did not correctly determine, or take into account in sustaining the final order of appellee, the true amount of annual revenues that appellant would derive from Lima service during the

ordinance period if the rates fixed by appellee in its said final order are made effective for said ordinance period.

7. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring a substantial part, to-wit, more than $15,000, of the amount for gas produced and purchased proved to have been expended in rendering Lima service during the four-year period considered by appellee [fol. 76] in making its final order in this cause.

8. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring a substantial part, to-wit, more than $24,000, of the amount for distribution expense proved to have been expended in rendering Lima service during said four-year perior considered by appellee in making its final order in this cause.

9. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring a substantial part, to-wit, more than $4,000 of the amount for commercial expense proved to have been expended in rendering Lima service during said four-year period considered by appellee in making its final order in this cause.

10. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring a substantial part, to-wit, more than $28,000, of the amount for new business expense proved to have been expended by appellant in rendering Lima service during said four-year period considered by appellee in making its final order in this cause.

11. The Supreme Court of Ohio erred in upholding the action of appellee in ignoring a substantial part, to-wit, more than $10,000, of the amount for general and miscellaneous expense proved to have been expended by appellant in rendering Lima service during said four-year period considered by appellee in making its final order in this cause.

12. The Supreme Court of Ohio erred in approving a six-year period as the period during which the rate case expense incurred by appellant in appealing from the rate ordinance of the city of Lima, Ohio, passed March 19, 1928, should be amortized when said ordinance fixed rates for a term of five years only.

13. The Supreme Court of Ohio erred in that it upheld

the action of appellee in disregarding the fact that sub-
[fol. 77] sequent to the year 1931 the excise tax imposed by the laws of Ohio upon appellant in connection with its Lima service was increased by a large amount, to-wit, approximately $5,000 per year.

14. The Supreme Court of Ohio erred in that it upheld the action of appellee in taking into account in determining operating costs and net earnings of appellant from, and in fixing a statutory rate for, Lima service a wholly inadequate amount for the item of depreciation or retirement reserve, to-wit, $24,518 per year; whereas appellee should have made an allowance for, and taken into account, an amount greatly in excess thereof, to-wit, approximately $52,500 per year.

15. The Supreme Court of Ohio erred in that it upheld the action of appellee in refusing to allow as an item of operating expense any amount whatsoever for the amortization of the gas transmission main used by appellant in Lima service; whereas under the evidence in said proceedings, the sum of approximately $23,000 annually should have been allowed for such item.

16. The Supreme Court of Ohio erred in that it held that the method of allocating certain operating expenses which was adopted by appellee in fixing rates in this cause was not unfair to appellant and was not illegal.

17. The Supreme Court of Ohio erred in that it sustained the action of appellee in basing its decision upon a consideration of the average revenues, expenses and net earnings for the years 1928, 1929, 1930 and 1931 without regard to the downward trend of revenues and net earnings shown to exist during said period, or to the effect of the rates fixed by said final order on the earnings of appellant from Lima service during the year 1932 and subsequently.

[fol. 78] 18. The Supreme Court of Ohio erred in that it refused to require appellee in fixing rates for Lima service to find the effect that the rates fixed by the final order would have upon revenues and net earnings from Lima service for each of the years for which said rates were made effective.

19. The Supreme Court of Ohio erred in holding that a

return of six per centum per annum on a rate base fixed by appellee would be a fair, non-confiscatory return for the ordinance period, when in fact a return of not less than eight per centum per annum on the rate base should have been allowed to avoid confiscation.

20. The Supreme Court of Ohio erred in holding that the rates complained of would have yielded a fair, non-confiscatory rate of return, when in fact the rate of return under such rates would be less than fair and non-confiscatory and would not exceed an average of two per centum per annum upon the rate base for said ordinance period.

21. The Supreme Court of Ohio erred in that it refused to require appellee in fixing rates to determine for each year of the ordinance period the net return that appellant must be allowed to earn in order that the confiscation of appellant's property devoted to Lima service would be avoided.

22. The Supreme Court of Ohio erred in holding that when the integrity of operating expenses incurred by a public utility in rendering public service and not involving payments to an associated company is attacked, the burden is on the utility to prove the necessity and reasonableness of such expenditure.

23. The Supreme Court of Ohio erred in finding that there was in the record in this cause any attack made on the actual expenditures of appellant for gas produced and [fol. 79] purchased, distribution expense, commercial expense, new business expense, general and miscellaneous expense and/or rate case expense which would make applicable to this case the rule of law announced by said court and assigned as error in the foregoing assignment No. 22, even if as an abstract principle of law the said rule announced by said court were a correct one.

24. The Supreme Court of Ohio erred in that it did not find that appellee in making its final order and its findings in support thereof unduly and illegally invaded upon the right of management and the freedom of ownership of appellant in the control and operation of its property used in rendering Lima service.

25. The Supreme Court of Ohio erred in that it failed to

accord due and proper weight to the evidence introduced in the proceedings before it, disregarded many of the facts established by such evidence, and upheld the final order of appellee although said final order and the findings therein are unsupported by the evidence introduced in said proceedings and are contrary to the facts established by such evidence.

26. The Supreme Court of Ohio erred in failing and refusing to give appellant that independent review of both the facts and the law which is essential to a proper judicial review of a rate order if appellant is to be afforded the equal protection of the laws and due process of law guaranteed appellant by section one of the fourteenth amendment to the constitution of the United States.

27. The Supreme Court of Ohio erred in that it sustained the action of appellee in refusing to grant the rehearing in said cause duly prayed for by appellant, and thereby denying appellant the right to show in evidence in said cause the exact effect which the rate fixed by appellee would have on the net earnings of appellant during the five-year period covered by said ordinance, and each and every [fol. 80] year thereof, and the right to show in evidence the facts as to its revenues received, expenses incurred and net earnings derived in rendering gas utility service within said city of Lima, Ohio, for the calendar year 1932 and for the first two months of 1933, all being facts that were not available when hearings were completed in said cause.

Prayer for Reversal

For which errors, appellant, the above named West Ohio Gas Company, prays that the said judgment of the Supreme Court of Ohio, dated May 16, 1934, in the above entitled cause, be reversed and a judgment rendered in favor of the said appellant, and for costs.

Dated this 12th day of June, 1934.

Chas. C. Marshall, H. O. Bentley, Cooke, Sullivan & Ricks, Attorneys for West Ohio Gas Company, Appellant.

Presented June 12, 1934 and allowed June 15, 1934.

Carl V. Weygandt, C. J.

[fols. 81-88] [File endorsement omitted.]

[fol. 89] IN SUPREME COURT OF OHIO

No. 24104

WEST OHIO GAS COMPANY, an Ohio Corporation, Plaintiff in Error (Appellant),

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO, Defendant in Error (Appellee)

Appeal to the Supreme Court of the United States

ORDER ALLOWING APPEAL—Filed June 15, 1934

West Ohio Gas Company, plaintiff in error in the above entitled cause, having prayed for the allowance of an appeal therein to the Supreme Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of Ohio on the 16th day of May, 1934, and from each and every part thereof, and having presented and filed its Petition for Appeal, Assignment of Errors and Prayer for Reversal, and its Statement as to Jurisdiction on Appeal, pursuant to the statutes of the United States and the rules of the Supreme Court of the United States in such case made and provided; and it appearing from the said petition and the record of the above entitled cause that there is drawn in question the validity of a final rate order, made and entered March 11, 1933 by The Public Utilities Commission of Ohio, on the grounds that said final order deprives said West Ohio Gas Company of its property without due process of law, denies said West Ohio Gas Company the equal protection of the laws and is repugnant to section one of the fourteenth amendment to the constitution of the United States; and it further appearing that the decision of the Supreme Court [fol. 90] of Ohio was in favor of the validity of said final order and that said petition is a proper petition for the issuance of this order:

It is now hereby ordered by the undersigned, Chief Justice of the Supreme Court of Ohio, that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of Ohio in the above entitled cause, as provided by law, and it is further ordered

that the clerk of the Supreme Court of Ohio shall prepare and certify the transcript of the record, proceeding and judgment in the above entitled cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within forty days from this date;

And it is further ordered, that security for costs of appeal be fixed in the sum of one thousand dollars ($1,000.00).

Dated this 15th day of June, 1934.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

[fols. 90a-96] [File endorsement omitted.]

[fol. 97] Citation in usual form showing service on John W. Bricker and Donald C. Power filed June 15, 1934, omitted in printing.

[fols. 98-107] [File endorsement omitted.]

[fol. 108] IN SUPREME COURT OF OHIO

[Title omitted]

ORDER TRANSMITTING ORIGINAL EXHIBITS—Filed July 6, 1934

It appearing that in this cause it is necessary and proper in the opinion of the undersigned, the Chief Justice of the Supreme Court of Ohio, that certain original exhibits set out in the Praecipe for Transcript filed herein should be inspected in the Supreme Court of the United States upon the appeal of this cause; and that said exhibits cannot be reproduced accurately without great inconvenience, it is hereby ordered that the following exhibits referred to and described in the transcript of record herein, be transmitted by the clerk of the Supreme Court of Ohio to the clerk of the Supreme Court of the United States at Washington and returned after the disposition of the appeal to the clerk of the Supreme Court of Ohio, to-wit:

Company Exhibit "A"—Graphic record made by Thomas Recording Calorimeter showing B. t. u. content of gas produced for distribution in Lima, Ohio, during the month of October, 1929.

Company Exhibit "H"—Graphic record made by Thomas Recording Calorimeter showing B. t. u. content of gas produced for distribution in Lima, Ohio during the month of April, 1928.

[fol. 109] Commission Exhibits 1, 2, 3 and 4 of March 8, 1933—Annual reports filed with The Public Utilities Commission of Ohio by West Ohio Gas Company for the years 1928, 1929, 1930 and 1931.

Dated this 6 day of July, A. D. 1934.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

[fol. 109a] [File endorsement omitted.]

[fol. 110] May 9, 1928.—Bond fixed at $88,000 to suspend fixed rates.

W. Klinger. J. B. Huffman.

(The Public Utilities Commission of Ohio. Rec'd May 9, 1928. 1 P. M. Columbus, Ohio.)

BEFORE PUBLIC UTILITIES COMMISSION OF THE STATE OF OHIO

No. 5137

D-13-P-109

In the Matter of the Appeal of the West Ohio Gas Company from the Ordinance Passed by the City of Lima, Ohio, March 19, 1928, Ordinance No. 2675, Fixing the Maximum Price to be Charged for Gas in the City of Lima, Ohio, for a Period of Five Years From and After the Effective Date of said Ordinance

COMPLAINT

To the Honorable Public Utilities Commission of Ohio:

The West Ohio Gas Company says that it is a corpora-

tion duly organized and existing under the laws of the State of Ohio, for the purpose (among other purposes) of manufacturing, furnishing and distributing gas for light, heat and power, for public and private consumption, with its principal office and place of business in Lima, Ohio, and a distribution system in said City of Lima, Ohio, for the manufacturing, distribution and furnishing of gas for light, heat and power for public and private consumption and for supplying gas to citizens, individuals, firms and corporations in the City of Lima, Ohio.

This Company and its predecessors have for a great many years, to-wit: more than forty, been so furnishing gas to the City of Lima, Ohio and its inhabitants for private and public lighting, heating and power purposes and that this Complainant is still so engaged in the manufacturing and furnishing of gas in said City and to the inhabitants thereof, under franchise rights granted by said City which are still in full force and effect.

That prior to January 1st, 1926, Complainant was furnishing manufactured gas to the City of Lima, Ohio and its inhabitants for private and public lighting, heating and power purposes under Schedule P. U. C. O. Number 1; that on December 31st, 1925, this Complainant filed with this Commission and to become effective with the consent of said Commission on January 1st, 1926, Schedule P. U. C. O. Number 2, which said schedule thereupon became and now is in full force and effect and Complainant has ever since and is now serving under said Schedule and at the rates therein fixed.

That on the 19th day of March, 1928, the City of Lima, Ohio, by its duly elected and acting City Commission, duly passed an Ordinance under the authority of Sections 614-44 and 3983, General Code of Ohio, and other provisions of law relating thereto, fixing the price which may be charged for gas in the City of Lima, Ohio for a period of five years commencing on the effective date of said Ordinance, which Complainant understands to be now effective, a copy of which Ordinance being attached marked "Exhibit A" and made a part hereof.

Said Ordinance was thereafter published as required by law and has not been accepted by this Complainant.
[fol. 111] The rate, price and charge so fixed by said City Commission in said Ordinance is and will be unjust, unrea-

sonable, confiscatory and unlawful in the following respects, to-wit:

First. Said rate, price or charge will not yield the Complainant reasonable and just compensation for manufacturing, furnishing and distributing gas to citizens, individuals, firms and corporations in the City of Lima, Ohio in that

(a) It will not yield the Complainant a fair, just and reasonable return on the value of its property used and useful in manufacturing, furnishing, distributing and supplying gas as aforesaid;

(b) It will not yield sufficient revenue to pay the cost of furnishing, distributing and supplying gas as aforesaid;

(c) It will result in taking the property of the Complainant for public use without compensation and without due process of law.

Second. Said rate, price or charge will result in denying to Complainant a fair, just and reasonable return upon the value of the property used and useful in furnishing gas for light, heat and power to the public as aforesaid in the City of Lima, Ohio.

Third. The rate, price or charge fixed in said Ordinance is confiscatory and denies to Complainant reasonable and just compensation for furnishing gas for light, heat and power and denies to Complainant a fair, just and reasonable return on the value of its property used and useful for the public convenience, and said rate, price or charge is so unreasonable as to practically destroy the value of the property of the Complainant and the enforcement of said ordinance will result in taking the property of the Complainant for public use without compensation and without due process of law and will deprive Complainant of the equal protection of the law, in contravention of the Constitution of the State and the Constitution of the United States and the Fourteenth Amendment thereto.

Fourth. Said ordinance expressly prohibits any meter charge, minimum charge, ready to serve charge or any other charge except as expressly provided in Section 1 thereof, and Complainant avers that said Ordinance should provide a proper ready to serve, minimum or other charge,

and is unlawful and discriminatory in not making such provision.

The Complainant further says that it has not accepted said ordinance nor the price to be charged for gas as therein fixed, and cannot and does not accept the same; that Section 614-44 of the General Code provides that the filing of a complaint by a public utility against a rate established by ordinance of Council, shall be taken and held to be the consent of such public utility to furnish its product or service and to devote its property engaged therein to such public use during the term so fixed by ordinance; that Complainant is in this proceeding appealing to this Commission from the rate fixed by the City Commission of the City of Lima, Ohio, and is agreeing by reason of said provisions of the Statute only, that it will continue to furnish its service and devote its property engaged therein to such public use during the term so fixed by ordinance.

Complainant further represents to this Honorable Commission that the rate and price fixed by this ordinance is unfair, unjust, unreasonable, confiscatory and unlawful and will not yield sufficient, reasonable and just compensation [fol. 112] to Complainant on the value of its property used and useful in manufacturing, furnishing, distributing and supplying gas, and will not yield sufficient revenue to pay the cost of manufacturing, furnishing, distributing, or supplying gas and amounts to a confiscation of the property of the Complainant for public use without compensation and without due process of law, in violation of its established rights both under the Constitution of Ohio and the Constitution of the United States.

This complaint is made under authority and provisions of Sections 614-44 to 614-46, General Code of Ohio, (among others) and complainant hereby elects to charge the schedule of rates in force and effect on March 19, 1928, the date of the passage of said ordinance, until this appeal is disposed of by this Commission.

Wherefore, complainant on this appeal prays that a time may be fixed for the hearing of this complaint; that notice of the filing and pendency of this complaint shall be given as provided by law; that upon the hearing of this complaint your Honorable Commission may find and determine that said rate, price or charge fixed by said Ordinance of the City of Lima, Ohio, is unfair, unjust, unreasonable,

confiscatory and unlawful; and that thereupon your Honorable Commission shall fix and determine the fair, just and reasonable rate or schedule of rates to be charged by the Complainant for manufacturing, furnishing and distributing and being ready, willing and able to manufacture, furnish and distribute gas to the citizens and public generally of the City of Lima, Ohio, and order the same substituted for the rate, price or charge fixed by said ordinance and for such other orders and relief as may be just and proper in the premises.

Dated May 7, 1928.

The West Ohio Gas Company, Appellant, by H. O. Bentley, J. H. Goeke, and F. L. Daily, Its Attorneys.

Duly sworn to by Emmett R. Curtin. Jurat omitted in printing.

[fol. 113] EXHIBIT "A" TO COMPLAINT

An Ordinance Regulating the Price That May Be Charged for Natural, Mixed or Manufactured Gas, in the City of Lima, Ohio, During the Period of Five (5) Years From and After the Effective Date of This Ordinance.

Be it ordained by the City Commission of the City of Lima, Ohio:

Section 1. That for a period of five (5) years from and after the effective date of this ordinance, the maximum price which the West Ohio Gas Company, its successors and assigns shall be permitted to charge for natural, mixed or manufactured gas furnished to the city of Lima, Ohio, and its inhabitants shall be and the same hereby is fixed for each individual consumer as follows:

90c for the first 1000 cubic feet used each month.
80c per thousand cubic feet for the next 3000 cubic feet used each month.
75c per thousand cubic feet for the next 6000 cubic feet used each month.
55c per thousand cubic feet for all over 10,000 cubic feet used each month.

Section 2. There shall be no meter charge, minimum charge, readiness to serve charge nor other charge except as provided in section one hereof.

Section 3. This ordinance shall be in full force and effect from and after the earliest period allowed by law.

Final passage: Passed March 19th, 1928.

Ellis B. Jones, President of the Commission. Attest, Frank H. Hume, Clerk.

In effect March 29th, 1928. Published Star, March 28, 1928.

March 12th, 1928—Moved by Rohn, seconded by Harley, that rules be suspended and ordinance passed on first reading. Yeas (3), Harley, Jones, Rohn. Nays (2), Blank and Shook. Chair declared suspension of rules lost.

Moved by Rohn, seconded by Harley, that ordinance be placed on first reading. Yeas (3), Harley, Jones, Rohn. Nays (2), Blank and Shook. The Chair declared the ordinance placed on first reading.

Lima, Ohio, March 28th, 1928.

I, Ruth Keating, Deputy Clerk of City Commission, hereby certify the above to be a true and correct copy of Ordinance # 2675, passed by City Commission on March 19th, 1928.

(Signed) Ruth Keating, Deputy Clerk of Commission. (Seal.)

[fol. 114] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

[Title omitted]

FINDING AND ORDER FIXING TENTATIVE VALUATION

This day, after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for consideration upon the complaint of and appeal by the West Ohio Gas Company from the ordinance passed March 19th, 1928, by the Council of the city

of Lima, Ohio, fixing the price which may be charged for natural gas in the city of Lima, Ohio, for a period of five years.

And the Commission coming now to value the property of said appellant, used and useful for the convenience of the public for the furnishing of its natural gas service in the said city of Lima, Ohio, and after considering the evidence and exhibits offered at the hearing, and having completed an independent inventory and valuation of said property, and being fully advised in the premises,

The Commission finds and ascertains the value of the several kinds and classes of property of the West Ohio Gas Company used and useful for the convenience of the public in the furnishing of natural gas service to its consumers and to the public in the city of Lima, Ohio, and of said property as a whole, as of March 31st, 1928, to be as set forth in the following summary (the grand totals of which are, Reproduction Cost New, $2,390,177.03, and Present Value, $1,899,317.63), namely:

(Here follows table, side folio 115)

[fol. 115]

The West Ohio Gas Company (Lima District)

Final Summary of Accounts

No.....

No. of items	Description	Unit cost	Reproduction value	Depreciation			Total %	Total depreciation	Present value
				Wear and Tear %	Wear and Tear Amt.	Amortization			
.....	Transmission—Right-of-Way	.....	15,111.51	.....	.....	.....	0.0	0.0	15,111.51
.....	Transmission—Main	.....	503,716.83	18.72	94,302.88	132,439.41	45.01	226,742.29	276,974.54
.....	Town Border Meter and Regulator Station	.....	2,179.36	.....	.....	.....	14.23	310.21	1,869.15
.....	Office Furniture and Fixtures	.....	11,900.00	.....	.....	.....	7.60	904.40	10,995.60
.....	Transportation Equipment	.....	7,845.67	.....	.....	.....	20.00	1,569.14	6,276.53
.....	Manufacturing Plant—Land	.....	63,750.00	.....	.....	.....	0.0	0.0	63,750.00
.....	Manufacturing Plant—Buildings	.....	81,346.07	.....	.....	.....	16.186	13,166.67	68,179.40
.....	Manufacturing Plant—Apparatus	.....	153,705.41	.....	.....	.....	15.31	23,532.84	130,172.57
.....	Manufacturing Plant—Yard Structures	.....	193,190.50	.....	.....	.....	16.87	32,580.35	160,610.15
.....	Manufacturing Plant—Miscellaneous	.....	42,620.11	.....	.....	.....	11.09	4,724.69	37,895.42
.....	Distribution System—Land	.....	2,050.00	.....	.....	.....	0.0	0.0	2,050.00
.....	Distribution System—Buildings	.....	1,780.91	.....	.....	.....	28.73	511.64	1,269.27
.....	Distribution System—Building Contents	.....	3,047.11	.....	.....	.....	15.00	457.08	2,590.03
.....	Distribution System—Mains	.....	806,671.47	.....	.....	.....	14.32	115,536.45	691,135.02
.....	Distribution System—Services	.....	129,898.56	.....	.....	.....	17.00	22,082.22	107,816.34
.....	Distribution System—House Governors	.....	272.84	.....	.....	.....	15.00	40.93	231.91
.....	Distribution System—Meters and Connections	.....	152,321.76	.....	.....	.....	10.00	15,232.17	137,089.59
.....	Distribution System—Tools	.....	3,390.05	.....	.....	.....	40.00	1,356.02	2,034.03
	Total Physical Property	.....	2,174,798.16	.....	.....	.....	21.09	458,747.10	1,716,051.06
.....	Organization	7%	152,235.87	.....	.....	.....	21.09	32,112.30	120,123.57
.....	Interest During Construction								
.....	Engineering								
.....	Law Expenditures During Construction								
.....	Taxes During Construction								
.....	Other Expenditures During Construction								
	Total Fixed Capital	.....	2,327,034.03	.....	.....	.....	21.09	490,859.40	1,836,174.63
.....	Working Capital	.....	40,341.00	.....	.....	.....	.....	.....	40,341.00
.....	Material and Supplies	.....	22,802.00	.....	.....	.....	.....	.....	22,802.00
	Grand Total	.....	2,390,177.03	.....	.....	.....	20.54	490,859.40	1,899,317.63

[fol. 116] It is, therefore, ordered, That notice of such valuation so placed upon the said property be transmitted by registered letter to the said West Ohio Gas Company, and to the Mayor of Lima, Ohio, all as provided for under Section 449-12 of the General Code of Ohio. It is further,

Ordered, That all inventories, valuations, transcripts and exhibits be filed and considered as a part of the record herein. It is further, ordered, That the Commission reserve the right in the event it shall determine the aforesaid inventory to be incomplete or inaccurate, or that said valuation is incorrect, and to make such changes therein as may be necessary before the said tentative valuation shall become final.

The Public Utilities Commission of Ohio, (Signed) E. J. Hopple, Chairman; (Signed) Frank W. Geiger, (Signed) John Bricker, Commissioners.

Dated at Columbus, Ohio, this 15th day of September, 1931.

[Stamp:] Approved, William Roger Dwyer, Chief Engineer; Ira E. Sprankle, Supt. of Investigation.

[fol. 117] [File endorsement omitted]

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

[Title omitted]

PROTEST AGAINST TENTATIVE VALUATION OF THE PROPERTY OF WEST OHIO GAS COMPANY—Filed Oct. 14, 1931

Comes now West Ohio Gas Company, an Ohio corporation, petitioner in the above entitled cause, and for the following reasons and each of them, protests against the tentative valuation of the property of petitioner used and useful in rendering gas utility service to the city of Lima, Ohio (said property being hereinafter for convenience sometimes referred to as "Lima property of petitioner"), and against the inventory of said property, made by The Public Utilities Commission of Ohio in cause No. 5137 and certified by said commission on the 15th day of September, 1931:

1. The sum of $2,390,177.03 found by said commission to represent the total cost of reproduction as of March 31, 1928 of the several kinds and classes of the Lima property of petitioner is substantially less than the sum that in fact represents the necessary, true and correct cost of reproduction of said properties on said date.

2. The total sum of $521,007.70 found by the commission to represent the cost of reproduction as of March 31, 1928 of transmission line right of way, transmission main and town border meter and regulator station which are a part of the Lima property of petitioner, is substantially less than the sum that in fact represents the necessary, true and correct cost of reproduction as of said date of said transmission line right of way, transmission main and town border meter and regulator station.

[fol. 118] 3. The sum of $11,900.00 found by the commission to represent the cost of reproduction as of March 31, 1928 of office furniture and fixtures which are a part of the Lima property of petitioner is substantially less than the sum that in fact represents the necessary, true and correct cost of reproduction as of said date of said office furniture and fixtures.

4. The sum of $7,845.67 found by said commission to represent the cost of reproduction as of March 31, 1928 of the transportation equipment which is a part of the Lima property of petitioner, is substantially less than the sum that in fact represents the necessary, true and correct cost of reproduction as of said date of said transportation equipment.

5. The sum of $534,612.09 found by the commission to represent the cost of reproduction as of March 31, 1928 of the land, buildings, apparatus, yard structures and miscellaneous equipment, together constituting the gas manufacturing plant which is a part of the Lima property of petitioner, is substantially less than the sum that in fact represents the necessary, true and correct cost of reproduction as of said date of said gas manufacturing plant.

6. The sum of $1,099,432.70 found by the commission to represent the cost of reproduction as of March 31, 1928 of the land, buildings, building contents, mains, services,

house governors, meters and connections, and tools, together constituting the distribution system which is a part of the Lima property of petitioner, is substantially less than the sum that in fact represents the necessary, true and correct cost of reproduction as of said date of said distribution system.

7. The sum of $152,235.87 fixed by the commission in its valuation as of March 31, 1928 as the allowance for organization, engineering, law, tax, interest and other expeditures during construction, necessary in and in connection with the reproduction as of said date of the Lima property of petitioner, is unreasonably low and is substantially less than the sum that in fact represents the amount which it would be necessary to expend for said overhead items in or in connection with the reproduction as of March 31, 1928 of the Lima property of petitioner.

8. The findings by the commission that the per centum of depreciation of the various and several kinds and classes of the Lima property of petitioner were on March 31, 1928 as follows, to wit:

Class of Property	Per Centum depreciated by Comm.
Transmission main	45.01
Town border meter and regulator station	14.23
Transportation equipment	20.00
Manufacturing plant—buildings	16.186
Manufacturing plant—apparatus	15.31
Manufacturing plant—yard structures	16.87
Manufacturing plant—miscellaneous	11.09
Distribution system—buildings	28.73
Distribution system—building contents	15.00
Distribution system—mains	14.32
[fol. 119] Distribution system—services	17.00
Distribution system—house governors	15.00
Distribution system—meters and connections	10.00
Distribution system—tools	40.00
Organization, engineering, law, interest, tax and other expenditures during construction	21.00

and each of said findings are findings of a percentage of depreciation greatly in excess of the respective true and

actual percentages of depreciation accrued as of said date on said kinds and classes of the Lima property of petitioner.

9. The deduction by the commission of the sum of $490,-859.40 because of alleged depreciation accrued as of March 31, 1928 on the Lima property of petitioner is a deduction of an amount greatly in excess of the amount representing the true and actual depreciation accrued on said property at said date.

10. The deduction of $132,439.41 from the reproduction value of the transmission main comprising a part of the Lima property of petitioner, which was made by the commission because of the alleged amortization of said transmission main, is arbitrary and unjust, and is not warranted by any existing facts or based upon any evidence appearing in the record in this cause.

11. The deduction by the commission, from the reproduction value of the transmission main comprising a part of the Lima property of petitioner, of any amount whatsoever because of the alleged amortization of said transmission main, is arbitrary and unjust, and is not warranted by any existing facts or based upon any evidence appearing in the record in this cause.

12. The deduction by the commission of the sum of $94,-302.88 because of the alleged depreciation accrued as of March 31, 1928 on the transmission main comprising a part of the Lima property of petitioner is a deduction of an amount greatly in excess of any deduction warranted by the actual depreciation accrued on said transmission main at said date.

13. The deduction by the commission of the sum of $310.21 because of alleged depreciation accrued as of March 31, 1928 on the town border meter and regulator station comprising a part of the Lima property of petitioner is a deduction of an amount greatly in excess of any deduction warranted by the actual depreciation accrued on said town border meter and regulator station at said date.

14. The deduction by the commission of the sum of $1,-569.14 because of alleged depreciation accrued as of March 31, 1928 on the transportation equipment comprising a

part of the Lima property of petitioner is a deduction of an amount greatly in excess of any deduction warranted by the actual depreciation accrued on said transportation equipment at said date.

15. The deduction by the commission of the sum of $74,004.55 because of alleged depreciation accrued as of March 31, 1928, on the buildings, apparatus, yard structures and miscellaneous equipment together comprising the gas [fol. 120] manufacturing plant which is a part of the Lima property of petitioner is a deduction of an amount greatly in excess of any deduction warranted by the actual depreciation accrued on said gas manufacturing plant.

16. The deduction by the commission of the sum of $155,216.51 because of alleged depreciation accrued as of March 31, 1928 on the buildings, building contents, mains, services, house governors, meters and connections, and tools together comprising the distribution system which is a part of the Lima property of petitioner is a deduction of an amount greatly in excess of any deduction warranted by the actual depreciation accrued on said transmission system at said date.

17. The deduction by the commission of the sum of $32,112.30 because of alleged depreciation accrued as of March 31, 1928 on the organization, engineering, law, interest, tax and other expenditures during construction necessary in and in connection with the reproduction as of said date of the Lima property of petitioner is a deduction of an amount greatly in excess of any deduction warranted by the actual depreciation accrued on said overhead expenditures at said date.

18. The sum of $1,899,317.63 found by the commission to represent the total value as of March 31, 1928 of the several kinds and classes of the Lima property of petitioner is substantially less than the sum that in fact represents the actual, true and correct total value of said property on said date.

19. The value as of March 31, 1928 ascribed by the commission to numerous items of the Lima property of petitioner is less than the true and correct value of said respective items on said date.

20. The sum of $293,955.20 found by the commission to represent the value as of March 31, 1928 of the transmission line right of way, transmission main, and the town border meter and regulator station which are a part of the Lima property of petitioner, is substantially less than the sum that in fact represents the actual, true and correct value as of said date of said transmission line right of way, transmission main, and the town border meter and regulator station.

21. The sum of $10,995.60 found by the commission to represent the value as of March 31, 1928 of the office furniture and fixtures which are a part of the Lima property of petitioner, is substantially less than the actual, true and correct value as of said date of said office furniture and fixtures.

22. The sum of $6,276.53 found by the commission to represent the value as of March 31, 1928 of the transportation equipment which is a part of the Lima property of petitioner is substantially less than the actual, true and correct value as of said date of said transportation equipment.

23. The sum of $460,607.54 found by the commission to represent the value as of March 31, 1928 of the land, buildings, apparatus, yard structures and miscellaneous equipment, together comprising the gas manufacturing plant which is a part of the Lima property of petitioner, is substantially less than the actual, true and correct value as of said date of said gas manufacturing plant.

24. The sum of $944,216.19 found by the commission to represent the value as of March 31, 1928 of the land, buildings, building contents, mains, services, house governors, meters and connections, and tools, together constituting [fol. 121] the distribution system which is a part of the Lima property of petitioner, is substantially less than the actual, true and correct value as of said date of said distribution system.

25. The sum of $120,123.57 found by the commission to represent the value as of March 31, 1928 of the organization, engineering, law, interest, tax and other expenditures during construction necessary in and in connection with the

reproduction of the Lima property of petitioner, is substantially less than the actual, true and correct value as of said date of said overhead items.

26. The sum of $40,341.00 fixed by the commission as an allowance for working capital needed by petitioner in and in connection with the rendering of gas utility service to the public in said city of Lima, is insufficient and wholly inadequate, and is substantially less than the amount of working capital actually and necessarily supplied and used by petitioner in and in connection with the rendering of said gas utility service.

27. The commission has not included in its inventory of the Lima property of petitioner, and in making a tentative valuation of said property to be used as a rate base in the foregoing cause has given no consideration to, numerous items of property which were in fact on March 31, 1928, and are now being and have at all times since said date been, used and useful for the rendering by petitioner of gas utility service to the public in the said city of Lima.

28. The commission has not included in its inventory of the Lima property of petitioner, and in making a tentative valuation of said property to be used as a rate base in the foregoing cause has given no consideration to, property owned by petitioner on March 31, 1928, which prior to said date had been acquired by petitioner for use in the rendering by it of gas utility service to the public in the said city of Lima, and has since said date been used and is now being used for said purpose.

29. The commission has not included in its inventory of the Lima property of petitioner, and in making a tentative valuation of said property to be used as a rate base in the foregoing cause has given no consideration to, numerous items of property which since March 31, 1928 have been acquired by petitioner and have been and now are used and useful in the rendering by it of gas utility service to the public in said city of Lima.

30. The commission has excluded from its inventory of the Lima property of petitioner, and in fixing the tentative valuation of said property to be used as a rate base in the foregoing cause has given no consideration to,

numerous items of property which were on March 31, 1928 and for a long period thereafter in fact used and useful in rendering by petitioner of gas utility service to the public in the said city of Lima.

31. The respective unit costs applied by the commission to items of property included in the Lima property of petitioner are in numerous instances too low and are not the true and correct unit costs which ought to have been applied in determining the reproduction cost as of March 31, 1928 of said respective items of property.

32. The commission in fixing the cost of reproduction as of March 31, 1928 of the Lima property of petitioner has not made reasonable allowance for contingencies and [fol. 122] omissions, and an allowance in a reasonable amount for such purposes is necessary and essential in order to determine the cost of reproduction of said property.

33. The commission has not included in its tentative valuation of the Lima property of petitioner, any amount for going concern value although going concern value is a part of and inherent in the property devoted by petitioner to the rendering of gas utility service to the public in said city of Lima, and although the evidence establishes such a going concern value in an amount of not less than $276,687.00. Said failure and refusal of the commission to include in said valuation allowance for said going value is arbitrary and unjust and will result in the confiscation of a part of the property devoted by petitioner to the rendering of gas utility service to the public in said city of Lima.

34. The commission has not included in its tentative valuation of the Lima property of petitioner, any allowance for investment bankers' services although such expense is a necessary, reasonable and proper part of the cost of reproduction of the Lima property of petitioner, and although the evidence establishes that for such purpose an item in an amount of not less than $152,178.00 should be included in said cost of reproduction.

35. The commission in fixing its tentative valuation of the Lima property of petitioner has wholly failed to give

due weight or consideration to the evidence introduced in this cause.

36. The commission has based its finding as to the valuation of the Lima property of petitioner in part upon matters not in evidence in this cause.

37. The commission in making its tentative valuation of the Lima property of petitioner has failed and refused to make said valuation in the manner required, and in accordance with the principles established by, the decisions of the Supreme Court of the United States.

38. To order said tentative valuation made final, and to base the rates, charges, tolls and fares of petitioner thereon, would result in the confiscation of petitioner's property, in the denial to petitioner of the right to earn a return upon a part of its property devoted to the public service, and in the denial to petitioner of due process of law—all in violation of the provisions of the constitutions of the United States of America and of the state of Ohio.

Wherefore, petitioner prays that The Public Utilities Commission of Ohio will cause such further proceedings to be had herein as are contemplated by law, and will thereafter correct and complete its inventory of the property of petitioner used and useful in rendering gas utility service to the public in said city of Lima, will correct its valuation of the said property of petitioner so as to make the same set forth an actual value as of March 31, 1928, of all of the Lima property of petitioner, will add to said [fol. 123] value reasonable allowance for the value of property devoted by petitioner since said date to the public service of said city of Lima, and will give and grant petitioner such other and further relief to which it may be entitled.

West Ohio Gas Company, an Ohio Corporation, by Chas. C. Marshall, H. O. Bentley. Cooke, Sullivan & Ricks, Its Attorneys.

[fol. 124] The Public Utilities Commission of Ohio. Recd. Oct. 14, 1931, 3 p. m. Columbus, Ohio.

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

[Title omitted]

PROTEST OF THE CITY OF LIMA, OHIO, TO TENTATIVE VALUATION

Now comes the City of Lima, Ohio, and protests against the valuation of the property of the appellant used and useful for the convenience of the public as found by this Commission September 15, 1931, in the following particulars:

(1) The allocated portion of the transmission main and the manufacturing plant included in the valuation is in excess of the used and useful property necessary for the convenience of the public of the city.

(2) There are other items included in the valuation in excess of their true value and also which are not used and useful.

City of Lima, by Melvin C. Light, Its Attorney.

[fol. 125] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

[Title omitted]

FINDING AND ORDER FIXING FINAL VALUATION

This day after full hearing, due notice of the time and place of which was given to all parties in interest, this matter came on for final consideration upon the protests to the tentative valuation certified herein September 15th, 1931, and the testimony and exhibits offered and introduced in evidence upon such hearing.

The Commission, being fully advised in the premises, finds that the following additions should be made to said tentative valuation to incorporate therein, 1,553 feet of ten inch transmission main properly allocable to the service in the City of Lima, Ohio, to-wit:

Transmission right of way: Reproduction value, $76.42; Depreciation, —; Present Value, $76.42.

Transmission Mains: Reproduction value, $2,547.13; Depreciation, $400.54; Present Value, $2,146.59.

Total Physical Property: Reproduction Value, $2,623.55; Depreciation, $400.54; Present Value, $2,223.01.

General Overheads: Reproduction Value $183.65; Depreciation, $28.03; Present Value, $155.62.

Total Fixed Capital: Reproduction Value, $2,807.20; Depreciation, $428.57; Present Value, $2,378.63.

Grand Total: Reproduction Value, $2,807.20; Depreciation $428.57; Present Value $2,378.63.

The Commission further finds that the protests to said tentative valuation are not well taken in any other respect, and that the same should be, and hereby they are overruled in all other respects, it is, therefore,

Ordered, That the Commission do find, ascertain and determine the final value, as of March 31st, 1928, of the several kinds and classes of property of The West Ohio Gas Company, used and useful for the convenience of the public, in the furnishing of natural gas service to its consumers, and to the public, in the City of Lima, Ohio, and of said property as a whole, to be set forth in the following summary (the grand totals of which are, Reproduction Cost New, $2,392,-984.23, Depreciation, $491,287.97, and Present Value $1,901,-696.26), namely:

[fol. 126]

The West Ohio Gas Company (Lima District)

Final Summary of Accounts

No.....

No. of items	Description	Unit cost	Reproduction value	Depreciation			Total %	Total depreciation	Present value
				Wear and Tear %	Wear and Tear Amt.	Amortization			
.....	Transmission—Rights of Way	.....	15,187.93	.....	.....	.....	0.0	0.0	15,187.93
.....	Transmission—Main	.....	506,263.96	18.71	94,703.42	132,439.41	44.87	227,142.83	279,121.13
.....	Town Border Meter and Regulator Station	.....	2,179.36	.....	.....	.....	14.23	310.21	1,869.15
.....	Office Furniture and Fixtures	.....	11,900.00	.....	.....	.....	7.6	904.40	10,995.60
.....	Transportation Equipment	.....	7,845.67	.....	.....	.....	20.0	1,569.14	6,276.53
.....	Manufacturing Plant—Land	.....	63,750.00	.....	.....	.....	0.0	0.0	63,750.00
.....	Manufacturing Plant—Buildings	.....	81,346.07	.....	.....	.....	16.186	13,166.67	68,179.40
.....	Manufacturing Plant—Apparatus	.....	153,705.41	.....	.....	.....	15.31	23,532.84	130,172.57
.....	Manufacturing Plant—Yard Structures	.....	193,190.50	.....	.....	.....	16.87	32,580.35	160,610.15
.....	Manufacturing Plant—Miscellaneous	.....	42,620.11	.....	.....	.....	11.09	4,724.69	37,895.42
.....	Distribution System—Land	.....	2,050.00	.....	.....	.....	0.0	0.0	2,050.00
.....	Distribution System—Buildings	.....	1,780.91	.....	.....	.....	28.73	511.64	1,269.27
.....	Distribution System—Building Contents	.....	3,047.11	.....	.....	.....	15.00	457.08	2,590.03
.....	Distribution System—Mains	.....	806,671.47	.....	.....	.....	14.32	115,536.45	691,135.02
.....	Distribution System—Services	.....	129,898.56	.....	.....	.....	17.00	22,082.22	107,816.34
.....	Distribution System—House Governors	.....	272.84	.....	.....	.....	15.00	40.93	231.91
.....	Distribution System—Meters and Connections	.....	152,321.76	.....	.....	.....	10.00	15,232.17	137,089.59
.....	Distribution System—Tools	.....	3,390.05	.....	.....	.....	40.00	1,356.02	2,034.03
	Total Physical Property		2,177,421.71	.....	.....	.....	21.09	459,147.64	1,718,274.07
.....	Organization	7%	152,419.52	.....	.....	.....	21.09	32,140.33	120,279.19
.....	Interest During Construction								
.....	Law Expenditures During Construction								
.....	Engineering								
.....	Taxes During Construction								
.....	Other Expenditures During Construction								
.....	Total Fixed Capital		2,329,841.23	.....	.....	.....	21.09	491,287.97	1,838,553.26
.....	Working Capital		40,341.00	.....	.....	.....	.....	.....	40,341.00
.....	Materials and Supplies		22,802.00	.....	.....	.....	.....	.....	22,802.00
	Grand Total		2,392,984.23	.....	.....	.....	20.53	491,287.97	1,901,696.26

[fol. 127] To which order of the Commission, the protestants each then excepted, here now except, and their exceptions here are noted of record.

Public Utilities Commission of Ohio, (Signed) E. J. Hopple, Chairman, (Signed) John W. Bricker, Commissioners.

Dated at Columbus, Ohio, this 27th day of January, 1932.

[fol. 128] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

[Title omitted]

ORDER PLACING ANNUAL REPORTS IN EVIDENCE

Upon the Commission's own motion and for the purpose of completing the record herein, it is,

Ordered, That the annual reports filed with this Commission by the West Ohio Gas Company for the years 1928, 1929, 1930 and 1931 be, and hereby they are introduced in evidence and made a part of the record herein as Commission Exhibits 1, 2, 3, and 4.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 8th day of March, 1933.

[fol. 129] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

[Title omitted]

ORDER FIXING RATES FOR GAS

This day after full hearing and argument by counsel, this matter came on for final consideration upon the complaint of and appeal by the West Ohio Gas Company from Ordinance No. 2675 passed by the Council of the city of Lima, Ohio,

March 19, 1928, fixing the maximum price for mixed gas in the city of Lima, Ohio, for a period of five years, from the effective date of said Ordinance, and the record made upon such hearing.

The Commission, being fully advised in the premises, and having caused an appraisement to be made and having ascertained, determined and fixed the value of all of the property of said company actually used and useful for the convenience of the public in the furnishing of mixed gas for public and private consumption in the city of Lima, Ohio, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration or the grant of such franchise or right and exclusive of any value added thereto by reason of a monopoly or merger, and having taken into consideration the necessity of making reservations from income for surplus, depreciation and contingencies, and all other matters which were deemed proper, and having this day made and filed in writing its findings of fact herein, the Commission further finds:

(1) That the rates and charges fixed and prescribed by said Ordinance, as follows, to-wit:

First	1,000 cubic feet or less	90¢
Next	3,000 cubic feet	80¢ per M. C. F.
Next	6,000 cubic feet	75¢ per M. C. F.
All over	10,000 cubic feet	55¢ per M. C. F.

are unjust and unreasonable and ought not to be ratified and confirmed, and that just and reasonable charges should be substituted therefor;

(2) That the rates and charges following, to-wit:

400 cubic feet or less used per month	$1.00
Next 9,600 cubic feet used per month	95¢ per M. C. F.
Over 10,000 cubic feet used per month	75¢ per M. C. F.
Penalty for non-payment of bill within ten days after receipt of bill	05¢ per M. C. F.

are just and reasonable rates and charges for the service supplied by the appellant in the city of Lima, Ohio, and

(3) That the gross and net revenues derived by the said West Ohio Gas Company from the furnishing of mixed gas

for public and private consumption in the city of Lima, the rates and charges herein found by the Commission to be just and reasonable, will be sufficient to yield the said West Ohio Gas Company a reasonable compensation for such service.

[fol. 130] It is, therefore, ordered, That the rates and charges hereinbefore found and determined by this Commission to be just and reasonable for the furnishing of mixed gas by the said West Ohio Gas Company for public and private consumption within the city of Lima, Ohio, be, and hereby they are substituted for the rates and charges fixed by the said Ordinance which the Commission has found to be unjust and unreasonable.

And the Commission having made inquiry and investigation with respect to the ability of the West Ohio Gas Company to furnish mixed gas for public and private consumption in the city of Lima, Ohio, during the period fixed by said Ordinance and having found that the said West Ohio Gas Company is and will be able to furnish its said product in said city for said period, it is, therefore,

Ordered, That the rates, prices and charges not greater than nor in excess of the rates, prices and charges for mixed gas furnished by the West Ohio Gas Company to the citizens and private consumers and to the public buildings, grounds, streets, lanes, alleys, avenues and market places in the city of Lima, Ohio, for public and private consumption which the Commission has found herein to be just and reasonable be, and remain in force and effect for the period fixed and prescribed by said Ordinance, and the said West Ohio Gas Company hereby is notified, directed and required to furnish its said product to the consumers thereof and for public and private business in the said city of Lima, for and during said period. It is, further,

Ordered, That the said West Ohio Gas Company be, and hereby is notified, directed and required within thirty days herefrom to refund, in cash, to all consumers of mixed gas in the city of Lima, Ohio, the excess in the charges which said consumers have paid for the service actually received from the effective date of the Ordinance herein complained of and appealed from, based upon the billing of such service at the rates hereinbefore found and determined by the Commission to be just and reasonable. It is, further,

Ordered, That jurisdiction of this proceeding be, and hereby is retained for the purpose of auditing the report of

such refunders which the said West Ohio Gas Company hereby is directed to make immediately upon the completion of the same.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 11th day of March, 1933.

[fol. 131] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

In Re Appeal of West Ohio Gas Company from the ordinance passed by the City of Lima, Ohio, March 19, 1928, being Ord. No. 2675, fixing the maximum price to be charged, etc., for gas in the City of Lima, Ohio, for a period of 5 years from effective date of that ordinance

OPINION

History of the Case

The history of this case extends back to March 31, 1928, at which time the Council of the City of Lima passed an Ordinance which set forth the following rates for gas to be sold in that city by the West Ohio Gas Company:

90¢ for the first 1,000 cubic feet,
80¢ per M. C. F. for the next 3,000 cubic feet,
75¢ per M. C. F. for the next 6,000 cubic feet,
55¢ per M. C. F. for all over 10,000 cubic feet.

These rates were not acceptable to the Company, and, consequently, it appealed to this Commission from the above Ordinance rates, a bond was fixed and the company continued to collect the rates which were in effect before the passage of the Ordinance and which are as follows:

$1.25 for the first 400 cubic feet or less per month,
1.05 per M. C. F. for the next 9,600 cubic feet,
1.00 per M. C. F. for the next 25,000 cubic feet,
.75 per M. C. F. for all over 35,000 cubic feet.

In addition to the history of the instant case, the records

of this Commission show that this Company and its customers have been in almost constant rate litigation since 1921.

The records of this Commission also show that in 1924, the Company serving the City of Lima and several other gas companies were purchased and consolidated by a holding company of major size, so that the company which began to distribute gas in the City of Lima forty odd years ago, is now a subsidiary of the type of holding company which has become so well known in this country during the past few years.

There have been, during the pendency of the case, numerous conferences between the Commission, the Company and the Municipal authorities, in an endeavor to work out a satisfactory rate, under the unusual conditions incident to the service in the City of Lima.

Very recently, the Commission was requested by the company and the municipal authorities and certain civic groups to withhold its decision in the hope that an adjustment might be made. Being now advised that this endeavor has proved futile, the Commission hastens to make disposition of the case.

Problems Involved

There are many elements in this case which conspire to produce a rate to the consumer which must, in these times, seem unreasonably high, and the quality of service, even for the high rate, far from satisfactory.

[fol. 132] An outstanding cause of these disappointing results is the fact that the gas distributed in the City of Lima is a mixture of two parts artificial water gas, of low British thermal unit content, with one part of natural gas. The artificial gas has a B. t. u. content of about 300. The natural gas thermal content varies, an average being about 1,000. When the two are mixed in the proportion used in Lima, the mixture has a B. t. u. content of 550, about one half that of natural gas. It follows that, in buying this mixture at any given price, the consumer is paying almost twice as much for the heat units as if he were purchasing natural gas alone.

The artificial gas is manufactured at an initial cost of 20¢ per M. The natural gas is purchased from the Ohio Fuel Gas Company at a contract rate of 55¢ per M. The cost of the mixture to the company is approximately 32¢ per M., to

which must be added about 3½¢ per M. for incidental cost and expenses, such as storage before distribution and leakage during distribution. The average cost to the consumer, under the rate now charged by the company, is about $1.29 per M., making the cost of distribution alone, approximately 93¢ per M. c. f. This seems an unjustified charge for the service of distribution.

In the opinion of this Commission, mixed gas in Lima and elsewhere in this State, particularly at the present time when there is such an abundance of natural gas, is uneconomical.

Gate Price For Natural Gas

The rate of 55¢, which the West Ohio Gas Company (hereafter designated as the Lima Company) is compelled to pay to the Ohio Fuel Gas Company for its natural gas, also seems to us high.

In the present case, there is no connection shown between the Lima Company and the Ohio Fuel Gas Company; the former belonging to the Insull group and the latter belonging to the Columbia Gas and Electric Corporation group. There is no evidence that the Lima Company could obtain gas either from the Ohio Fuel Gas Company or from any other producer at a lesser rate than 55¢.

The Commission, as formerly constituted, held, in a case involving service to Kenton, that the distributing company should and might have obtained gas, at wholesale, at a price not exceeding 29¾¢, and based the charge to the consumer on this wholesale price. The holding of the Commission was reversed by a three-judge Federal Court, in the case of West Ohio Gas Company vs. Public Utilities Commission, 42 Fed. 2nd. Ser. 899. The court there held:

"We do not overlook the hardship suffered by the village, if it is true that by reason of a practical monopoly the service company is able to and does indirectly force the village to pay a price which, under all the pertinent circumstances is exorbitant; but the remedy is not to compel the helpless distributor, such as the evidence tends to show the plaintiff to be, to suffer a loss."

This decision of that Court involved the identical or a similar contract to that in this case, and leaves the Commis-

sion helpless to modify the wholesale contract or to grant any relief by a reduction of the wholesale price of the natural gas. The remedy lies with the Legislature.

Cost of Distribution

As before stated, the cost of distribution of the mixed gas, under the rate now charged by the company, averages 93¢ per M. c. f. In other cases the Commission ascertained and held that gas could be distributed with profit at a much lesser cost.

One cause of high rates in Lima, is that the use of gas is so restricted both as to the number of the consumers and the quantity consumed by each, that the overhead is excessive. The average amount used by Lima consumers is not large when compared with that in other cities.

[fol. 133] The commission is of the opinion that distributing a mixed gas in Lima is essentially uneconomic and that the situation might be very materially improved if the company would abandon the position that it must keep up the price in order to produce a fair return, and adopt, at least in a measure, the plan of offering to its patrons its commodity at a reduced price, and thus stimulate consumption.

The Commission feels that there is ample room for the practice of economies which will enable the company to produce a fair net return upon its property.

Notwithstanding our conviction that conditions in this case, as referred to above, have militated against an economical production and distribution of gas, the Commission has established rates that produce a return of approximately 6¼% of the value of the property used and useful.

Had we accepted, without question, the company's figures, the return developed from these rates would have been less than 6%.

The Commission finds that the figures adopted, as hereinafter detailed, are justified by the facts in this case, and will produce an ample return.

Valuation

The final valuation fixed by this Commission Sept. 15, 1931, for property used and useful in the City of Lima is

$1,901,696.26 as of March 31, 1928. That figure represents the then present value of the property.

This amount, with the exception of an item of about $13,000.00, is conceded by the City and represents the judgment of the Appraisal Engineers of this Commission. It is felt that the amount of property devoted to the service of Lima is in excess of present needs, and has been in excess of needs of the City of Lima for some time past. It is perhaps true that a valuation made as of today would result in a lower aggregate figure, but we are limited by law to a date certain, and that date certain in this case is March 31, 1928, the effective date of the ordinance passed by the City of Lima.

Operating Expenses

Attention is now turned to the expenses incurred by the Company in serving consumers in the City of Lima.

The Company contends that for the year ending March 31, 1928, the expenses of the Company for its operations in Lima District amounted to $407,884.93, as shown by Company Exhibit No. 105, which is partially reproduced here.

Operating Expenses

Gas Produced and Purchased	$176,861.75
Distribution Expenses	43,233.85
Commercial Expenses	22,721.55
New Business Expenses	9,049.33
General and Miscellaneous Expenses	39,065.17
Indirect Charge to Construction (Cr) (Red)	2,869.41
Retirement Allowance	53,639.00
Allowance for Amortization of Pipe Line	23,416.00
Real and Personal Property Taxes	24,778.32
State of Ohio—Excise Tax	7,661.69
Tax for Maintenance Public Utilities Commission	290.29
Federal Income Tax	7,256.57
Uncollectible Accounts	2,780.82
Total Cost of Operation	$407,884.93

The figures presented by the City for the same year are less than those of the Company by only about $20,000.00, in-

dicating substantial agreement between the parties hereto in practically all items.

[fol. 134] Annual Reports of Company

The Commission feels that it should pursue another line of analysis covering four calendar years, based upon an examination of the annual reports filed with this body by the company. These reports which, on the Commission's own motion are now made a part of the record, tell a somewhat different story of expense. The following will suffice to establish this difference:

The annual reports for 1928 to 1931, inclusive, filed by this company and which cover the entire system of the West Ohio Gas Company (which serves twelve or thirteen communities) show that the average distribution expense per customer for these years was $3.52; that the average commercial expense was $2.04; that the average new business expense was $1.05; that the average general and miscellaneous expense was $3.44.

These expenses in the opinion of the Commission represent items which should be distributed against all the consumers of the entire system of the West Ohio Gas Company.

It is felt that consumers in Lima should bear no higher portion of these expenses than other consumers. It is true that some of the communities served by the West Ohio Gas Company receive natural gas only, but this fact is, in our opinion, of negligible consequence.

The distribution, commercial, and general and miscellaneous expenses have been reduced from the averages shown by the company's books for the years 1928 to 1931 incl., to the average expenditure per customer for these expenses for the same years over the entire West Ohio Gas Company system. These adjusted amounts appear in the table of operating statistics hereinafter set forth.

Company's Claimed Expenses Questioned

We differ from the Company in the following details.

Depreciation

The Company claims that it should be permitted to set up for annual Depreciation charges the sum of $53,639.00.

The City claims that the sum of $35,579.32 should be allowed as an annual Depreciation Charge, this sum being 1½ per cent per annum of the reproduction value of the depreciable property used and useful in Lima.

Neither amount is satisfactory. In the record of this case, it is said (Pages 1169 et seq.) that the actual experience of the Company relative to depreciation for the seven-year period 1925 to 1931, was at the rate of 95/100ths of 1 per cent per year of the Company's book value of its property and, further, that if the Company's experience in regard to book value is applied to this Commission's finding as to reproduction cost, 9/10ths of 1 per cent per year would have been set up for depreciation purposes.

These statements are not refuted by the Company.

Nine-tenths of 1 per cent of the reproduction value of the depreciable property as of March 31, 1928, would be $20,169.08. This would be the amount allowed as an annual Depreciation Charge under the plan discussed above.

The Commission feels, however, that the annual rate of depreciation should be based upon the then present value of the depreciable property.

Consequently, there has been allowed an annual Depreciation charge amounting to 1.4 per cent on $1,751,288.60 of property as of March 31, 1928, resulting in an annual Depreciation charge of $24,518.04. In view of the evidence in the record of this case relative to Depreciation, the amount set up and allowed herein as an annual Depreciation charge is, in our opinion, ample.

This becomes particularly true when it is realized that the Company's maintenance policy undoubtedly provides for many items that would ordinarily be taken care of by the Depreciation Reserve.

[fol. 135] Amortization

The Company claims that by virtue of an order issued by this Commission in Case No. 179, decided 1924, it should be permitted to amortize the pipe line running from Kenton and other points to and beyond the City of Lima at the rate of $23,416.00 per year.

This pipe line has been in use for more than thirty years. It is of wrought iron, with a very long life.

When the order referred to was issued by this Commission, there was every reason to believe that the natural

gas supply going into this transmission line would soon exhaust itself. Such a development would have eliminated much of the usefulness of the transmission line, and it was only fair and reasonable that some provision should have been made at that time for the amortization of that line.

As indicated above, the subsequent developments in the gas industry in this State and elsewhere, have proven beyond reasonable doubt that there is now available an adequate supply of natural gas.

This amortization charge is therefore eliminated in this case. There is no cause to fear or expect a shortage of natural gas, and the mere fact that conditions at one time warranted a provision for such amortization is not sufficient to cause this Commission to now sanction such a charge.

Gas Leakage

The question of amount to be allowed to the company as an expense caused by leakage of gas, has given the Commission some concern. Gas leakage is a difficult matter to accurately estimate as it depends largely upon the relative quality of gas consumed through any given system. As the consumption of gas increases, the percentage of leakage to the amount consumed will decrease.

It is possible that leakage of artificial or mixed gas is greater than leakage of natural gas, due to the fact that there is greater moisture in artificial or a mixed gas than in natural gas.

An estimate of leakage in the Lima case, based upon the amount purchased and manufactured as compared to the amount distributed, would indicate an average leakage of 9%. This, we believe to be excessive and with proper care of the system could be reduced to 7%, which we allow. This reduction of 2% in leakage is reflected in a corresponding reduction in the cost of gas sold which appears in the operating statistics presented below.

New Business Expense

This item has been reduced to $5,000.00. The company's figures indicate that, over the four years in question, the average new business expense was $12,045.00, varying from $10,412.00 in 1928 to a maximum of $13,485.00 in 1930.

The testimony in this case has not convinced the Com-

mision that the expenditures under this head should be allowed as a burden upon the present consumers, in the full amount that may have been spent, by the company for the purpose of expanding its business. It is, of course, conceivable that the more new business that is gained for the company, the less will be the burden upon the individual consumers in the form of rates. However, this has not been the result from experience. There has been no appreciable expansion of business, due, to some extent, to the depression, and as we believe, also to the high price charged for the gas sought to be sold. We are willing to allow this item, in what we deem an ample sum, in the flat amount of $5,000.00 per year, which is reflected in the table below.

Expenses Allowed by Commission

Consequently this Commission has set up the following expenses for the Company in the City of Lima, as more nearly representing proper allowable expenses, than those claimed by the company.

[fol. 136] Expenses

Cost of Gas Sold		$146,574.92
Ditsribution Expense		34,892.75
Commercial Expense		19,986.75
New Business Expense		5,000.00
General and Miscel. Expense		33,713.00
Indirect Charges to Const. (Cr.)	(Red)	3,804.00
Depreciation		24,518.00
Real and Personal Property Taxes		22,797.25
Ohio Excise Tax		7,014.25
P. U. C. O. Tax		278.25
Income Tax		8,504.00
Uncollectible Accounts		2,445.75
Total Expenses		$305,686.88

Earnings

A consideration of the earnings of this Company, particularly as of the date certain in this cause, is now in order.

This Company, in its Exhibit No. 105, shows net earnings of $86,398.55, or 4.54 per cent on the valuation.

It is to be borne in mind that the earnings set forth by the Company in its case are based upon expenses as claimed by the Company and as commented on heretofore.

The City, in its contention, claims that the Company earned, for the year ending March 31, 1928, $94,400.98, or approximately 5 per cent upon the valuation.

The Commission finds that the average gross revenue enjoyed by this company for the sale of gas in the city of Lima for the calendar years 1928 to 1931, incl., was $482,-904.50. It is interesting to note that this average figure of gross earnings for the four calendar years is almost identical with the figure of $483,409.17, asserted by the company when the gross revenue received by it for the entire district are allocated to the city of Lima on the basis of gas actually sold within the city as shown by the company's exhibit for the year ending March 31st, 1928.

It is at once seen that with revenues of $482,904.50 from the city of Lima and with expenses of $305,686.88 as computed by the Commission, the company earned $177,218.62 or 9.32% on the valuation of $1,901,696.25.

Rate of Return Allowed

It is the sense of this Commission that a return of approximately 9.32% upon this property is excessive.

The Commission finds that an over-all return of approximately 6½% upon the then present value of the property devoted to the services of the city of Lima, is ample, particularly when it is felt that there is an excess of property devoted to the service of the city, and even a less return might be considered as just, due to the facts hereinbefore discussed.

Rates Established

As against the schedule of rates now being collected under bond by the company and as against the rates proposed in the ordinance, the Commission has evolved the following schedule:

$1.00 for the first 400 cubic feet or less, used per month.

.95 per M.C.F. for the next 9,600 cubic feet used per month.

.75 per M.C.F. for all gas in excess of 10,000 cubic feet, used per month.

A penalty of 5¢ per M.C.F. may be added in case of non-payment of bills within ten days.

The above table discloses a net income of $177,217.62 under the old rate which is an excess of $63,115.62 over net return of 6% ($114,102.00).

[fol. 137] While it is indicated that the annual excessive earnings are $63,115.00, this figure is the result of an average spread over a period of four years, and is not to be considered as the actual amount which will be refunded to Lima consumers for each year involved in this case. It may, however, approximate the amount of such refunds. The actual amount of the refund can only be ascertained after an examination of the books of the company and a disclosure of the amounts paid by each consumer during the period in question.

The Company, in its case, claims that it has not been earning a fair return upon its property; that it has not been earning enough to set aside proper amounts for Depreciation and Amortization and, in general, the Company sought to leave the impression that it was ekeing out a bare corporate living. These contentions lose much of their weight in the eyes of this Commission when it is noted in the annual reports of this Company that dividends on all classes of stock have been paid during the period involved; that fixed charges have been promptly met; that additions and betterments have been made to the property; that salaries, particularly of Administrative Officers, have not suffered greatly during the business depression.

It is not the province nor the aim of this Commission to manage The West Ohio Gas Company, but it is felt that expenses of the Company have not been reduced in line with the trend of the times.

It is the further feeling of this Commission that the rate established herein is fair to both customers and Company in view of the record of this case.

An order, in accordance with the findings herein, will issue.

The Public Utilities Commission of Ohio; E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 10th day of March, 1933.

A true copy:

David Shaw Archer, Assistant Secretary. (Seal.)

[fol. 138] EXHIBIT "A" TO OPINION

West Ohio Gas Company

Operating Statistics

Gas Sold in Lima (M.C.F.)	390,416.8
Gross Revenues	$482,904.50
Expenses:	
Cost of Gas Sold	$146,574.92
Distribution Expense	34,892.75
Commercial Expense	19,986.75
New Business Expense	5,000.00
Gen. & Miscel. Expense	33,713.00
Indirect Charges to Const. (Cr.) (Red)	3,804.00
(A) Depreciation	24,518.00
Real & Personal Property Taxes	22,797.25
Ohio Excise Tax	7,014.25
P. U. C. O. Tax	278.25
Income Tax	8,504.00
Uncollectible Accounts	2,445.75
Total Expenses	$305,686.88
Net Income	$177,217.62
Return on Valuation ($1,901.696.00)	9.32%
Excess over 6% ($114,102.00)	$ 63,115.62

(A) 1.4% on depreciable property ($1,751,288.80) in Lima.

All figures shown above are the averages of such figures contained in the records of the company for 1928, 1929, 1930 and 1931 and in their Exhibit in this case except the following:

(1) Cost of Gas Sold represents the above named average reduced 2% to provide for a 7% leakage instead of a 9% leakage as shown by the average.

(2) Distribution Expense, Commercial Expense and General Miscellaneous Expense have been fixed at the average per customer for the entire West Ohio Gas Company's system for the four years involved.

(3) New Business Expense has been fixed at the sum of $5,000.00.

[fol. 139] [File endorsement omitted]

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

[Title omitted]

PETITION FOR REHEARING FROM FINAL ORDER IN THE ABOVE ENTITLED CAUSE FIXING THE RATES TO BE CHARGED BY WEST OHIO GAS COMPANY FOR GAS UTILITY SERVICE RENDERED WITHIN THE CITY OF LIMA, OHIO—Filed March 18, 1933

West Ohio Gas Company, an Ohio corporation, petitioner in the above entitled cause, hereby petitions The Public Utilities Commission of Ohio for a rehearing on the final order entered in the above entitled cause on March 11, 1933, for the purpose of fixing rates to be charged for gas utility service rendered by petitioner within the city of Lima, Ohio, and prays that said order be vacated and set aside and that after said rehearing has been held the commission enter an order in the above entitled cause finding that the rates now being charged by petitioner for gas utility service have not heretofore, do not now and will not hereafter produce revenues from said gas utility service greater than revenues required in order that petitioner may earn a fair return on the fair value of its property devoted to said gas utility service and that said rates should not be decreased.

In support of this petition for rehearing, petitioner sets forth the following grounds on which, inter alia, petitioner considers that said final order of March 11, 1933, is erroneous, improper, arbitrary, unlawful and unreasonable, and is not based upon the facts as established by the evidence introduced in this cause, and/or that the rates fixed in said final order are unlawful, inadequate and confisca-
[fol. 140] tory:

1. The final order of the commission entered on March 11, 1933, in this cause, and many of the findings of the commission contained in the decision in this cause are contrary to the weight of, against, and not supported by, the evidence introduced at the hearings held in this cause.

2. The rates fixed by the commission in said final order as the rates to be charged by petitioner for gas utility service rendered within said city of Lima, Ohio, from and after April 19, 1928, will not produce adequate revenues to pay the reasonable operating expenses of rendering said service and to yield for petitioner a fair, adequate and compensatory return either on the fair value of the property devoted by petitioner to said public service or upon the value of said property so used as found and fixed by the commission in its final valuation order in this cause dated January 27, 1932.

3. If said rates provided for by the said final order of March 11, 1933, as aforestated, be fixed as the rates to be charged by petitioner for such gas utility service during the period from April 19, 1928, to December 31, 1928, petitioner would not secure from such service rendered during the year 1928 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

4. If the said rates provided for by the said final order of March 11, 1933, as aforestated, be fixed as the rates to be charged by petitioner for such gas utility service during the year 1929, petitioner would not secure from such service rendered during said year 1929 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

5. If the said rates provided for by the said final order [fol. 141] of March 11, 1933, as aforestated, be fixed as the rates to be charged by petitioner for such gas utility service during the year 1930, petitioner would not secure from such service rendered during said year 1930 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory

return on either the fair value of the property devoted by petitioner to such service during said period or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

6. If the said rates provided for by the said final order of March 11, 1933, as aforestated, be fixed as the rates to be charged by petitioner for such gas utility service during the year 1931, petitioner would not secure from such service rendered during said year 1931 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period, or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

7. If the said rates provided for by the said final order of March 11, 1933, as aforestated, be fixed as the rates to be charged by petitioner for such gas utility service during the year 1932, petitioner would not secure from such service rendered during said year 1932 sufficient revenues to pay the reasonable costs of rendering said service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service during said period, or on the value of said property so used as found and fixed by this commission in its final valuation order in this cause dated January 27, 1932.

8. If said rates fixed by this commission in said order of March 11, 1933, as aforestated, are permitted to remain in effect, petitioner will not be able to secure from such gas utility service rendered and to be rendered by it during the year 1933 and thereafter, sufficient revenues to pay the cost of rendering such service and to give petitioner a fair, adequate and compensatory return on either the fair value of the property devoted by petitioner to such service or on the value of said property so used as found and fixed by this [fol. 142] commission in its final valuation order in this cause dated January 27, 1932.

9. The commission in fixing said rates, as aforestated, and in finding that said rates would produce adequate rev-

enues to pay the cost of rendering said service and yield a fair, adequate and compensatory return to petitioner, has improperly ignored the facts established by the evidence in this case, and/or has arbitrarily failed or refused to give due and proper weight to such evidence.

10. The commission in fixing rates in this cause, and in finding that said rates fixed would produce adequate revenues to pay the cost of gas utility service rendered by petitioner within said city of Lima and to yield petitioner a fair return upon the fair value of the property devoted to such service, has improperly ignored the evidence as to cost of such service and has arbitrarily reduced below the actual cost thereof certain items of operating expenses incurred by petitioner in rendering such service.

11. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily and without any evidence to sustain such action, eliminated from the cost of rendering service, the annual allowance of $23,416.00 heretofore authorized by this commission for amortization of the gas transmission main now being used in rendering gas utility service to consumers within said city of Lima.

12. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily refused to allow as an item of operating expenses an adequate amount for retirement reserve, which allowance should have been an amount not less than the sum of $53,639.00 per annum claimed by petitioner.

13. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded as an operating expense of petitioner a part of the actual cost to petitioner of gas purchased and/or manufactured by it for use in rendering gas utility service within said city of Lima.

14. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded items of expenses incurred [fol. 143] by petitioner on unaccounted for gas losses actually suffered by petitioner in rendering gas utility service within said city of Lima.

15. The commission in fixing rates in this cause, and in

finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded a substantial part of the distribution expense actually incurred by petitioner in rendering gas utility service within said city of Lima.

16. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded as an operating expense a substantial part of the commercial expense actually incurred by petitioner in rendering gas utility service within said city of Lima.

17. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded as an operating expense a substantial part of the new business expense actually incurred by petitioner in rendering gas utility service within said city of Lima.

18. The commission in fixing rates in this cause, and in finding that said rates so fixed are adequate and compensatory, has arbitrarily disregarded as an operating expense a substantial part of the general and miscellaneous expense actually incurred by petitioner in rendering gas utility service within said city of Lima.

19. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded the evidence in this cause and failed to include in operating expense, amounts expended by petitioner in connection with this appeal from the rate ordinance passed by said city of Lima on March 19, 1928, and has arbitrarily failed and refused to consider said item of expense in determining the net return earned by petitioner under existing rates or under the rates fixed by this commission.

20. The commission in fixing rates in this cause, and in finding that said rates fixed are adequate and compensatory, has arbitrarily disregarded the fact that, commencing [fol. 144] with the year 1932, the excise tax which petitioner is required to pay the state of Ohio in connection with rendering gas utility service within said city of Lima has been increased from 1.35% per annum of the revenues derived from such service to 2.35% per annum of such revenues, or by an amount in excess of $4,200.00 per annum.

21. The action of the commission in fixing the distribution expense, commercial expense, and general and miscellaneous expense of petitioner in rendering gas utility service within the city of Lima, by taking petitioner's average system cost per customer for each such item of expense and multiplying such amount by the number of customers of petitioner in Lima, is arbitrary, unreasonable and unlawful, and disregards the true amounts of such expenses incurred by petitioner in rendering gas utility service within said city of Lima.

22. The findings of the commission as to the average annual operating expenses of petitioner in rendering gas utility service within said city of Lima during the four year period ending December 31, 1931, are arbitrary, unreasonable and unlawful, and not based upon the evidence in this cause.

23. Any order of the commission fixing rates to be charged by respondent for gas utility service rendered by petitioner within said city of Lima on such a basis as will not permit petitioner to earn, during each and every year of the ordinance period, an annual return of at least 8% on the fair value of the property devoted by petitioner to such service is arbitrary, unreasonable and unlawful, is in conflict with the evidence in this cause, and results in the confiscation of petitioner's property.

24. The finding of the commission that rates for gas utility service within said city of Lima should be fixed on a basis that would permit petitioner to earn annually only 6% on the value of its property devoted to such service, and that a return at such rate would be a fair, reasonable, [fol. 145] adequate and non-confiscatory return to be earned by petitioner in connection with such service during the period covered by said ordinance of March 19, 1928, and each of the years within said period, is arbitrary, erroneous and unlawful, is not supported by the evidence in this cause, and results in the confiscation of the property of petitioner devoted to such service. The evidence in this cause establishes that, if confiscation is to be avoided, the rates which have actually been charged by petitioner during the pendency of this cause, cannot be reduced for said ordinance period or any part thereof unless and except to the extent that during such time or part thereof petitioner has earned

from such service a return at a rate greatly in excess of said 6% per annum on such property, to-wit, in excess of 8% per annum.

25. The findings of the commission as to the average net earnings of petitioner for the four year period ending December 31, 1931, and as to the average per centum of return earned during said period upon the value of property devoted by petitioner to gas utility service within said city of Lima, and that an excessive rate of return was earned by petitioner during said period and each year thereof, and each of said findings, are arbitrary and erroneous, and not based upon the evidence in this cause.

26. The action of the commission in determining the question whether any refunds, and, if any, what amount of refunds, should be made by petitioner to consumers of gas utility service rendered by it within said city of Lima, by averaging the revenues, expenses and earnings of petitioner from such service during the four year period of 1928 to 1931, is erroneous, unreasonable and unlawful.

27. The commission has failed to determine the net return which would be earned by petitioner if the rates fixed by said order of March 11, 1933, are made applicable to gas utility service rendered by petitioner within said city of Lima during the period from April 19, 1928, to December 31, 1928, and during the calendar years 1929, 1930, 1931 and [fol. 146] 1932, and each of said years, or to estimate what the effect of said rates will be if made applicable to the calendar year 1933 and subsequent years. Such a finding, if based upon the evidence introduced in this cause, would necessarily show that if said rates are put in effect, petitioner would not and will not in said years, or any of them, obtain a reasonable return upon the fair value of its property devoted to said service and will show that the said rates fixed by this commission will result in the confiscation of petitioner's property during said period and during each year of said period. Petitioner desires an opportunity to introduce in evidence in this cause tabulations showing such calculations and estimates.

28. The commission has improperly failed and refused to consider the evidence as to actual revenues and expenses during each of the years during which the rates fixed by

the commission in this cause are ordered to be put in effect. It has arbitrarily determined the issues before it in this case on the basis of arbitrary averages, and has ignored and disregarded the evidence introduced in said cause as to actual revenues and cost of service during each of the years for which rates are to be fixed in this cause.

28a. The commission has found that the rates ordered in effect by said order of March 11, 1933, will pay all operating expenses incurred by petitioner in rendering gas utility service in said city of Lima and provide a 6% return upon the value of the property devoted to said service as found by the commission. The undisputed evidence in this case clearly establishes that such conclusion is incorrect and that said rates would not in any year during which they have been ordered effective have produced sufficient revenues to pay such operating expenses and provide even such an inadequate return.

28b. The commission in entering its final order in this cause has ignored the evidence introduced by petitioner as to the effect of the present economic situation upon the revenues derived by petitioner from gas utility service within said city of Lima, and the fact that even under existing rates petitioner's revenues for the year 1931 were ma- [fol. 147] terially less, and its net earnings available for return for said year were materially less, than the average for the four year period ending December 31, 1931. Petitioner's revenues and net earnings from such service were substantially lower in 1932 than in 1931, and petitioner asks an opportunity to show these facts as to its 1932 operations within said city of Lima.

29. Under the order of the Commission in this cause dated March 11, 1933, the property of petitioner devoted to rendering gas utility service within the said city of Lima would be confiscated for the public use during the entire period subsequent to April 19, 1928, and during each and every year of said period.

30. The finding of the commission as to the amount of revenue which would be derived by petitioner under the rates fixed by said final order of March 11, 1933, for said utility service within said city of Lima is erroneous, and is an amount greatly in excess of the actual revenues which

would be derived by petitioner if said rates are placed in effect for the period fixed in said ordinance of March 19, 1928.

31. The finding of the commission that the rates provided for in its said final order of March 11, 1933, will produce for petitioner an average minimum annual gross revenue of $419,788.88 is erroneous. Such rates will produce a much lower average gross revenue for the five year period fixed in said ordinance of March 19, 1928. Under existing rates, petitioner's gross revenue from gas utility service in said city of Lima was but $457,775.74 for the year 1931 and but $427,062.58 for the year 1932, and the rates fixed by the commission would reduce these revenues by approximately 13½%, and petitioner asks an opportunity to show these facts, insofar as they are not already disclosed by the record in this cause.

32. The finding of the commission that under the rates now in effect petitioner secures an excessive amount of revenue from gas utility service within said city of Lima, is erroneous and not supported by the evidence in this cause.

33. The order of the commission is erroneous in direct-
[fol. 148] ing petitioner to make to consumers of gas utility service rendered by petitioner within said city of Lima, refunds equal to the difference between the respective sums paid by such consumers for such service rendered during the ordinance period and the amount which such respective consumers would have paid for such service if the rates fixed in said final order of March 11, 1933, had been in effect during such period.

34. The commission has ordered and directed petitioner to make refunds to consumers of gas utility service rendered by petitioner within said city of Lima during the ordinance period, but has failed to consider the evidence as to the actual earnings of petitioner during this period and each year of said period, and to determine therefrom by what amount, if any, the net return earned by petitioner from said service during each such year exceeded the amount which petitioner must have been permitted to earn if the confiscation of its property devoted to such service is to be avoided.

35. The finding of the commission that the quality of petitioner's gas utility service within said city of Lima is far from satisfactory, is arbitrary, and is not based upon but is contradictory of the evidence in this cause.

36. The commission in fixing rates in this cause, and in finding that said rates are adequate and compensatory, has arbitrarily and erroneously refused to consider the amount of any and all additional capital investment made by petitioner since March 31, 1928, in property used and useful in rendering gas utility service within said city of Lima.

37. The commission has based its findings upon matters not in evidence in this cause.

38. The commission in its final order in this cause has wholly failed to give due weight or consideration to the evidence introduced in this cause.

39. The commission in entering its final order in [fol. 149] this cause has ignored, and failed and refused to fix rates and to determine the matters at issue in accordance with, the principles established by the Supreme Court of the United States as applicable to such proceedings.

40. To permit the rates fixed by said order in this cause to stand as final would result in the confiscation of petitioner's property, in the denial to petitioner of the right to earn a fair return upon its property used and useful in the public service and in the denial to petitioner of due process of law—all in violation of the constitution of the United States of America and of the constitution and laws of the State of Ohio.

41. Since the termination of hearings, and the closing of testimony, in this cause, the commission has, under date of March 8, 1933, on its own motion ordered that the annual reports filed by petitioner with the commission for the years 1928, 1929, 1930 and 1931 be made a part of the record in this cause as commission Exhibits 1, 2, 3 and 4. Petitioner objects to such arbitrary placing of said reports in evidence as a part of the record in this case, unless there is also made a part of said record and placed in evidence by the commission the annual report filed with this commission by petitioner for the year 1932. Said 1932 report of petitioner was filed with the commission on or about

March 1, 1933, and was on file with the commission at the time it entered its said order of March 8, 1933, above referred to.

And petitioner further prays that the commission shall at once enter an order in this cause staying and postponing the enforcement of said order of March 11, 1933, entered in this cause, and providing further (a) that if a rehearing is refused in this cause the enforcement of said order shall be stayed and postponed for a period of at least thirty days [fol. 150] after the commission has notified petitioner of its refusal to grant such rehearing, and (b) that if a rehearing is granted in this cause, as herein prayed, the enforcement of the final order in this cause shall be stayed and postponed until such reasonable time after said rehearing is held and determined as the commission shall fix and determine in its final order in this cause.

And petitioner further prays for such other and further relief as may be meet.

West Ohio Gas Company, an Ohio Corporation, by Emmett R. Curtin, President. Chas. C. Marshall, Cooke, Sullivan & Ricks; H. O. Bentley, Attorneys for West Ohio Gas Company, Petitioner.

[fol. 151] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO.

No. 5137

[Title omitted]

ORDER DENYING PETITION FOR REHEARING

This day, this matter came on for further consideration upon the petition of appellant, West Ohio Gas Company, asking, for the reasons and upon the grounds set forth therein, a rehearing of said proceeding and an extension of time within which refunds shall be made as directed by the order made and entered herein March 11th, 1933.

The Commission, being fully advised in the premises, finds that sufficient cause has not been made to appear in said petition for a rehearing of said proceeding, or an

extension of the time within which refunds shall be made. It is, therefore,

Ordered, That the application of the appellant, West Ohio Gas Company, asking for the reasons and upon the grounds set forth therein, a rehearing of said proceeding and an extension of the time within which refunds shall be made as directed by the order made and entered herein March 11th, 1933, be, and hereby it is denied.

To which order of the Commission denying said petition, the said West Ohio Gas Company then excepted, here now excepts, and its exceptions here are noted of record.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 22nd day of March, 1933.

[fol. 152] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO.

No. 5137

[Title omitted]

ORDER DIRECTING TRANSMITTAL OF RECORD

The West Ohio Gas Company, plaintiff in error, having appealed from the order of The Public Utilities Commission of Ohio fixing rates for gas service in the City of Lima, Ohio, it is hereby

Ordered, That the original filings, the entries and orders of the Commission, a transcript of the docket entries and the proceedings and testimony adduced upon hearing before the Commission, together with the exhibits, be forthwith transmitted to the Clerk of the Supreme Court of Ohio.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners. (Signed) David Shaw Archer, Assistant Secretary. [Seal.]

Dated at Columbus, Ohio, this 12th day of April, 1933.

Filed April 17, 1933. Supreme Court of Ohio. Seba H. Miller, Clerk.

[fol. 153] Filed Apr. 17, 1933. Supreme Court of Ohio. Seba H. Miller, Clerk.

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

In re Appeal of the West Ohio Gas Company from Ordinance passed by the City of Lima, Ohio, March 19, 1928, Ordinance No. 2375, fixing the maximum price to be charged for gas in the City of Lima, Ohio, for a period of five years from and after the effective date of said Ordinance.

DOCKET ENTRIES

Filed May 9, 1928—Complaint and Appeal from rates for gas service in the City of Lima, for five year period from effective date of ordinance.

May 1, 1928—Filed, Application by The West Ohio Gas Company for Commission to fix amount of bond to permit charging its schedules rate immediately prior to effective date of Ordinance.

May 9, 1928—Entry fixing amount of Bond to be filed by the West Ohio Gas Company in sum of $88,000.00.

May 9, 1928—Entry assigning appeal for public hearing Thursday, July 12, 1928, at ten o'clock A. M. EST, Hearing Room. Notice given.

May 12, 1928—Filed by The West Ohio Gas Company, Resolution Board of Directors authorizing Appeal Bond with Surety in the sum of $88,000.00.

May 21, 1928—Entry approving Bond of The West Ohio Gas Company.

July 12, 1928—Appeal called for hearing, heard in part. Exhibits filed: Company: 1—Inventory as of March 31, 1928; 2—Present Value as of January 1, 1925; 3—Present Value as of March 31, 1928; 4—Test Hole Inspection Report; 5—Report of Condition of Pipe; 6—Ditto. Recessed to a day to be fixed.

July 24, 1928—Filed transcript Proceedings and Testimony, 94 p.

[fol. 154] October 5, 1928—Upon request City Solicitor Lima, Ohio, for hearing date, proceeding assigned for further hearing, Tuesday, November 20, 1928, at ten o'clock A. M. EST, Hearing Room. Notice given.

November 20, 21 and 22—Sessions of hearing.

November 21 and 21, 1929—Hearing of Appeal; Exhibits filed: Company: 7—Inventory and Appraisal March 31, 1928, including Details of Reproduction Costs; 8—Revisions made of Inventory and Appraisal of Company's Exhibit No. 1; 9—Revisions of Company's Exhibit No. 3; 10—(to be furnished); 11—Certificates of Appraisals of Land; 12-27—Iron Rings (filed in Chief Engineer's Office); 28—List of Locations Open for Test; 29—Letter dated November 9, 1929, Hon. Paul Landis, City Solicitor, Lima, signed J. H. Goeke and H. O. Bentley. City's Exhibits: Analysis of Company's Reproduction Cost; Allensworth, 2—Reproduction Cost; 3—Same; 4—Reproduction Cost Collation; 5—Reproduction Cost New Company's Reproduction Cost Collation; 6—Present Valuation; 7—Copy Entry Certifying Tentative Valuation; Formal Proceeding No. 2360, dated September 30, 1921; 8—Copy Annual Report to The Public Utilities Commission of The West Ohio Gas Company for year ending December 31, 1927.

November 21, 1929—Entry assigning appeal for further hearing Wednesday, January 8, 1930, at ten o'clock A. M. EST, Hearing Room. Notice given.

December 3, 1929—Filed transcript Proceedings and Testimony ending with p. 593, Vol. 11.

December 31, 1929—Upon application of appellant and good cause shown, hearing assignment January 8, 1930, vacated, and said hearing reassigned for Monday, February 3, 1930, at ten o'clock A. M. EST, Hearing Room. Notice given.

January 21, 1930—Upon application of appellant and because of serious illness of remaining counsel, hearing assignment February 3, 1930, vacated and hearing reassigned for Monday, March 31, 1930, at ten o'clock A. M. Notice given.

March 31 & April 1, 1930—Sessions of hearing. Exhibits filed: City's: 9—A to E Estimation heating value of gas Lima Water Purification; 10—Copy Commission's Order 3413, Petition West Ohio Gas Company to discontinue natural gas service City of Lima, Ohio, and substitute manufactured gas; 11—Fixed Property Value Lima Gas Plants December 1, 1924; 12—Certified Statement No. of Customers Years 1924-25, 26-27, 28-29 and Cu. Ft. of artificial

gas and natural gas distributed 1924 to and thru 1929. Company: A—Pressure Gauge October 25, 1929; B and C—Photographs-Calormeter; D and E—Letters Logan Gas Company and The East Ohio Gas Company; F and G—Photostat Copies List of Properties Sold by The Medina Gas and Fuel Company to The Lima Natural Gas Company; H—Pressure Gauge Sheet April, 1928; City Ordinance City of Lima June 7, 1871, and August 23, '86.

April 12, 1930—Filed by City—Answer to questions of Commission, submitted at close of hearing March 31 and April 1, 1930.

[fol. 155] April 25, 1930—Filed transcript of hearing March 31 and April 1, 1930, p. 595-967.

May 1, 1930—Filed by appellant (its General Superintendent) answer to questions of Commission submitted to company at close of hearing.

May 3, 1930—Filed, Statement No. of Meters in Service, Lima, Ohio, 1924—January 1, 1930.

July 20, 1931—Filed reports of engineers to Chief Engineer.

September 10, 1931—Filed Report of Chief Engineer.

September 15, 1931—Entry fixing Tentative Valuation for the property used and useful in furnishing natural gas service to the public in the City of Lima and said property as a whole as of March 31, 1928. Copy served by registered mail upon the Company, the Mayor and City Solicitor.

October 14, 1931—Filed Protests by the City of Lima and West Ohio Gas Company vs. Commission's Tentative Valuation of property of West Ohio Gas Company.

October 14, 1931—Entry assigning hearing on protests for Tuesday, December 8, 1931, at ten o'clock A. M., Hearing Room. Notice given.

November 28, 1931—Upon Commission's own motion hearing assignment of Protests vs. Tentative Valuation vacated, reassigned for Thursday, January 21st, 1931, at ten o'clock A. M., Hearing Room. Notice given.

January 6, 1932—Filed Supplementary Bond in sum of $652,000.00 with Midland Utilities Company surety with Certified Copy Board of Directors authorizing. Entry of Commission approving.

January 21, 1932—Hearing on Protests vs. Tentative Valuation. Filed, Commission's Exhibits: 1—Report of Commissioner's Engineers to Chief Engineer date July

20, 1931; 2—Report to Superintendent of Investigation dated September 10, 1931; 3—Report and Drawing of Engineer to Chief Engineer dated March 16, 1931. Company: 100—Supplementary Summary Cost Reproduction Cost New, Lima District at of March 31, 1928; 101—Ditto, Reproduction Depreciated; 102—Rate of Return on Combined Valuations all Districts, 1922-1930; 103—Ditto, Lima District.

January 27, 1932—Finding and Order Fixing Final Valuation of several kinds and classes of property of West Ohio Gas Company used and useful for convenience to the public in furnishing natural gas service to the public in the City of Lima, and of said property as a whole as of March 31, 1928; Grand Totals, Reproduction Cost New, $2,392,-984.23; Depreciation, $491,287.97, and Present Value, $1,-901,696.26. Protestant excepts, exceptions noted.

January 30, 1932—Filed Transcript Proceedings and Testimony hearing Jan. 21, 1932. 32 p.

February 19, 1932—Filed Petition for Rehearing as to Final Valuation—gas utility service city of Lima, Ohio, by West Ohio Gas Company.

[fol. 156] February 25, 1932—Entry denying application of West Ohio Gas Company for rehearing, exceptions of West Ohio Gas Company taken and noted.

March 28, 1932—Entry assigning proceedings for hearing upon subject of receipts, Expenditures and Rate of Return, for Tuesday, April 26, 1932, at ten o'clock A. M. EST, Hearing Room. Notice given.

March 31, 1932—Filed by appellant, motion for continuance.

March 31, 1932—Upon application counsel for appellant and good cause shown, hearing assignment April 26, 1932, vacated; proceeding reassigned for May 11, 1932, at ten o'clock A. M., Hearing Room. Notice given.

May 7, 1932—Upon Motion City Solicitor, Lima, Ohio, and consent counsel for appellant, and because of interrelation of proceeding No. 5666, it is hereby ordered, hearing assignment May 11, 1932, be vacated and proceeding reassigned for Tuesday, June 7, 1932; vacated and proceeding reassigned for Tuesday, June 7, 1932, at ten o'clock A. M., Hearing Room. Notice given.

May 16, 1932—Filed affidavit B. P. Sheardon, Secretary Midland Utilities in re Articles of Incorporation.

June 4, 1932—Upon præcipe counsel for appellant, subpœna duces tecum issued and served by mail upon Howard L. Kay, Lima, Ohio, directing attendance as witness at hearing June 7, 1932, 10 A. M.

June 7 and 8, 1932—Hearing on rate question. Exhibits filed: Company: 104—Operating Expenses 1927, 1931, inclusive; 105—Ordinance Rate Comparison; 106—Cost of Money; 107—Schedule of Securities Allocation. Further hearing recessed to Friday, July 1, 1932, to permit City Solicitor to check exhibits.

June 22, 1932—Filed Transcript of June 7 and 8, hearing, 129 pages, ending with p. 1130.

July 1, 1932—Hearing held. Recessed to July 19, 1932, 10:00 A. M. Exhibits filed: City: A-1—Detailed Statement Midland Utilities Service, year ending December 31, 1931; A-2—Statement, Industrial, House Heating Gas Sales 1927-31, inclusive; A-3—Projected Income Statement.

July 12, 1932—Filed transcript Proceedings and Testimony of July 1st, ending with p. 1188.

July 19, 1932—Session of hearing. Exhibits filed: Company: 108—Trends of Construction Cost; and City: A-4—Copy of Commission's Final Valuation.

July 28, 1932—Filed transcript Proceedings and Testimony—73 p. ending with p. 1262.

March 11, 1933—Finding and Order of the Commission fixing rates for gas service in the City of Lima, Ohio, by the West Ohio Gas Company:

400 cu. ft. or less per mo. $1.00
Next 9,600 cu. ft. used per mo. ..... 95¢ per M C F
Over 10,000 cu. ft. used per mo. ..... 75¢ per M C F
Penalty for non-payment within 10 days after receipt of bill, .05¢ per M.C.F.

in lieu of rates appealed from of

First 1000 cu. ft. or less ..... .90¢
Next 3000 cu. ft. or less ..... .80¢ per M.C.F.
[fol. 157] Next 6000 cu. ft. or less ..... .75¢ per M.C.F.
All over 10,000 ..... .55¢

such rates to remain in force and effect during period fixed by said ordinance. Said West Ohio Gas Company directed and required within thirty days herefrom to refund, in cash, to all consumers of mixed gas in the City of Lima,

the excess in charges, which said consumers paid from effective date of ordinance appealed from, based upon the billing and rates found by the Commission to be just and reasonable. Jurisdiction of proceeding retained for purpose of auditing report of such refunders which said The West Ohio Gas Company is hereby directed to make immediately upon the completion of same. Copies served upon parties.

March 8, 1933—Upon Commission's own motion and for purpose of completing record herein, ordered that annual reports of the West Ohio Gas Company filed with Commission for years 1928, 1929 and 1930, and 1931 hereby are introduced in evidence and made part of Commission's Exhibits, Numbered 1, 2 and 3, and 4.

March 18, 1933—Filed Petition for Rehearing from Final Order fixing rates to be charged by West Ohio Gas Company for service within the City of Lima, Ohio, and to stay the collection of refunds during pendency of rehearing.

March 22, 1933—Entry denying application for rehearing and extension of time within which refunds shall be made. West Ohio Gas Company excepts; exceptions noted.

March 31, 1933—Filed in Supreme Court: No. 24104—Error Proceedings, West Ohio Gas Company vs. P. U. C. O.; Statement showing interested parties; Waiver service Summons in Error; Notice of Application for Stay of Execution and Application for Stay of Execution.

April 12, 1933—Entry transmitting papers to Clerk of the Supreme Court of Ohio.

The Public Utilities Commission of Ohio, E. J. Hopple, Frank W. Geiger, Charles F. Schaber, Commissioners. (Signed) David Shaw Archer, Assistant Secretary. [Seal.]

Dated at Columbus, Ohio, this 12th day of April, 1933.

[fol. 158] Certificate of transmittal omitted in printing.

[fol. 159] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

[Title omitted]

ORDER CORRECTING OPINION

Whereas, it appears that in the opinion and finding and the exhibit appended thereto, filed herein on March 10, 1933, the computation of the reasonable annual expenses allowed by the Commission for the furnishing of gas service in the City of Lima, Ohio, the total was erroneously set forth as the sum of $305,686.88 when such total should be $301,920.92, which error is reflected in the results of certain other computations thereinafter made in such opinion and finding of facts, and

Whereas, it appears that the correction of such errors in no wise changes the determination of the Commission in this proceeding or adversely affects the interest of the parties to the proceeding in error which has been prosecuted from the finding and order adopted thereupon, it is, therefore,

Ordered, That to set forth and reflect the opinion and findings of this Commission as actually made in this proceeding, pages three, six and seven of the opinion and the exhibit appended thereto nunc pro tunc March 10, 1933, be, and hereby the same are corrected to read as follows, to-wit:

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The Commission is of the opinion that distributing a mixed gas in Lima is essentially uneconomic and that the situation might be very materially improved if the company would abandon the position that it must keep up the price in order to produce a fair return, and adopt, at lease in a measure, the plan of offering to its patrons its commodity at a reduced price, and thus stimulate consumption.

The Commission feels that there is ample room for the practice of economies which will enable the company to produce a fair net return upon its property.

Notwithstanding our conviction that conditions in this case, as referred to above, have militated against an economical production and distribution of gas, the Commission

has established rates that produce a return of approximately 6.65% of the value of the property used and useful. [fol. 160] Had we accepted, without question, the company's figures, the return developed from these rates would have been less than 6%.

The Commission finds that the figures adopted, as hereinafter detailed, are justified by the facts in this case, and will produce an ample return.

Valuation

The final valuation fixed by this Commission Sept. 15, 1931, for property used and useful in the City of Lima is $1,901,696.26 as of March 31, 1928. That figure represents the then present value of the property.

This amount, with the exception of an item of about $13,000.00 is conceded by the City and represents the judgment of the Appraisal Engineers of this Commission. It is felt that the amount of property devoted to the service of Lima is in excess of present needs, and has been in excess of needs of the City of Lima for some time past. It is perhaps true that a valuation made as of today would result in a lower aggregate figure, but we are limited by law to a date certain, and that date certain in this case is March 31, 1928, the effective date of the ordinance passed by the City of Lima.

Operating Expenses

Attention is now turned to the expenses incurred by the Company in serving consumers in the City of Lima.

The Company contends that for the year ending March 31, 1928, the expenses of the Company for its operations in Lima District amounted to $407,884.93, as shown by Company Exhibit No. 105, which is partially reproduced here.

Operating Expenses

Gas Produced and Purchased	$176,861.75
Distribution Expenses	43,233.85
Commercial Expenses	22,721.55
New Business Expenses	9,049.33
General and Miscellaneous Expenses	39,065.17
Indirect Charge to Construction (Cr.) (Red)	2,869.41
Retirement Allowance	53,639.00

Allowance for Amortization of Pipe Line	23,416.00
Real and Personal Property Taxes	24,778.32
State of Ohio—Excise Tax	7,661.69
Tax for Maintenance Public Utilities Commission	290.29
Federal Income Tax	7,256.57
Uncollectible Accounts	2,780.82
Total Cost of Operation	$407,884.93

[fol. 161] The figures presented by the City for the same year are less than those of the Company by only about $20,000.00, indicating substantial agreement between the parties hereto in practically all items.

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Expenses

Cost of Gas Sold	$146,574.92
Distribution Expenses	34,892.75
Commercial Expenses	19,986.75
New Business Expense	5,000.00
Gen. and Miscel. Expense	33,713.00
Indirect Charges to Const. (Cr.) (Red)	3,804.00
Depreciation	24,518.00
Real and Personal Property Taxes	22,797.25
Ohio Excise Tax	7,014.25
P. U. C. O. Tax	278.25
Income Tax	8,504.00
Uncollectible Accounts	2,445.75
Total Expenses	$301,920.92

Earnings

A consideration of the earnings of this Company, particularly as of the date certain in this cause is now in order.

This Company, in its Exhibit No. 105, shows net earnings of $86,398.55, or 4.54 percent on the valuation.

It is to be borne in mind that the earnings set forth by the Company in its case are based upon expenses as claimed by the Company and as commented on heretofore.

The City, in its contention, claims that the Company

earned, for the year ending March 31, 1928, $94,400.98, or approximately 5 percent upon the valuation.

The Commission finds that the average gross revenue enjoyed by this company for the sale of gas in the city of Lima for the calendar years 1928 to 1931, incl., was $482,-904.50. It is interesting to note that this average figure of gross earnings for the four calendar years is almost identical with the figure of $483,409.17, asserted by the company when the gross revenue- received by it for the entire district are allocated to the city of Lima on the basis of gas actually sold within the city as shown by the company's exhibit for the year ending March 31st, 1928.

It is at once seen that with revenues of $482,904.50 from [fol. 162] the city of Lima and with expenses of $301,-920.92 as computed by the Commission, the company earned $180,983.58 or 9.52% on the valuation of $1,901,-696.25.

Rate of Return Allowed

It is the sense of this Commission that a return of approximately 9.52% upon this property is excessive.

The Commission finds that an over-all return of approximately 6.65% upon the then present value of the property devoted to the services of the city of Lima, is ample, particularly when it is felt that there is an excess of property devoted to the service of the city, and even a less return might be considered as just, due to the facts hereinbefore discussed.

Rates Established

As against the schedule of rates now being collected under bond by the company and as against the rates proposed in the ordinance, the Commission has evolved the following schedule:

$1.00 for the first 400 cubic feet or less, used per month.
.95 per M. C. F. for the next 9,600 cubic feet used per month.
.75 per M. C. F. for all gas in excess of 10,000 cubic feet.
A penalty of 5¢ per M. C. F. may be added in case of non-payment of bills within ten days.

The above table discloses a net income of $180,983.58

under the old rate which is an excess of $66,881.58 over net return of 6% ($114,102.00).

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While it is indicated that the annual excessive earnings are $66,881.58, this figure is the result of an average spread over a period of four years, and is not to be considered as the actual amount which will be refunded to Lima consumers for each year involved in this case. It may, however, approximate the amount of such refunds. The actual amount of the refund can only be ascertained after an examination of the books of the company and a disclosure of the amounts paid by each consumer during the period in question.

The Company, in its case, claims that it has not been earning a fair return upon its property; that it has not been earning enough to set aside proper amounts for Depreciation and Amortization and, in general, the Company sought to leave the impression that it was ekeing out a [fol. 163] bare corporate living. These contentions lose much of their weight in the eyes of this Commission when it is noted in the annual reports of this Company that dividends on all classes of stock have been paid during the period involved; that fixed charges have been promptly met; that additions and betterments have been made to the property; that salaries, particularly of Administrative Officers, have not suffered greatly during the business depression.

It is not the province nor the aim of this Commission to manage The West Ohio Gas Company, but it is felt that expenses of the Company have not been reduced in line with the trend of the times.

It is the further feeling of this Commission that the rate established herein is fair to both customers and Company in view of the record of this case.

An order, in accordance with the findings herein, will issue.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 10th day of March, 1933.

A true copy:

David Shaw Archer, Assistant Secretary. [Seal.]

Exhibit "A"

West Ohio Gas Company

Operating Statistics

Gas Sold in Lima (M. C. F.)	390,416.8
Gross Revenues	$482,904.50
Expenses:	
Cost of Gas Sold	$146,574.92
Distribution Expense	34,892.75
Commercial Expense	19,986.75
New Business Expense	5,000.00
Ge. and Miscel. Expense	33,713.00
Indirect Charges to Const. (Cr.) (Red)	3,804.00
(A) Depreciation	24,518.00
[fol. 164] Real and Personal Property Taxes	22,797.25
Ohio Excise Tax	7,014.25
P. U. C. O. Tax	278.25
Income Tax	8,504.00
Uncollectible Accounts	2,445.75
Total Expenses	$301,920.92
Net Income	$180,983.58
Return on Valuation ($1,901,696.00)	9.52%
Excess over 6% ($114,102.00)	$ 66,881.58

(A) 1.4% on depreciable property ($1,751,288.80) in Lima.

All figures shown above are the averages of such figures contained in the records of the company for 1928, 1929, 1930 and 1931 and in their Exhibit in this case EXCEPT the following:

(1) Cost of Gas Sold represents the above named average reduced 2% to provide for a 7% leakage instead of a 9% leakage as shown by the average.

(2) Distribution Expense, Commercial Expense and General and Miscellaneous Expense have been fixed at the average per customer for the entire West Ohio Gas Company's system for the four years involved.

(3) New Business Expense has been fixed at the sum of $5,000.00.

The Public Utilities Commission of Ohio, E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this 19th day of May, 1933. Nunc pro Tunc March 10, 1933.

Filed May 27, 1933. Supreme Court of Ohio. Seba H. Miller, Clerk.

[fol. 165] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

In the matter of the appeal of The West Ohio Gas Company from Ordinance passed by the city of Lima, Ohio, March 19, 1928, Ordinance Number 2675, fixing the maximum price to be charged for gas in the City of Lima, Ohio, for a period of five years from and after the effective date of that ordinance

Statement of Evidence

Proceedings and Testimony

Before Honorables William Klinger, Chairman; James W. Huffman and Frank B. Maullar, Public Utilities Commissioners on the 12th day of July, 1928

Present: H. O. Bentley and J. H. Goeke, on behalf of the West Ohio Gas Company. Paul T. Landis, City Solicitor, on behalf of the City of Lima, Ohio.

Be it remembered, That on the hearing of the above entitled matter, before the Public Utilities Commission of Ohio, the West Ohio Gas Company, to maintain the issues on its part to be maintained, offered and introduced in testimony on its behalf, the following evidence, to-wit:

[fol. 166] Morning Session

July 12, 1928.

COLLOQUY

Chairman Klinger: In the matter of the West Ohio Gas Company versus the City of Lima, appearances for the Gas Company?

Mr. Goeke: H. O. Bentley and J. H. Goeke.

Mr. Landis: And for the City, Paul T. Landis.

Chairman Klinger: You may proceed.

Mr. Bentley: I assume that the procedure is still the same, that we now go into the question of valuation only?

Commissioner Maullar: Yes.

Mr. Bentley: As far as the utility is concerned and then I presume Mr. Landis will want some time to go into that question.

Chairman Klinger: I don't suppose you will be ready to cross-examine.

Mr. Landis: No, not until after we get the transcript and examine the exhibits.

Mr. Bentley: So that matters of operating expenses and revenues and rates will not be gone into at this time at all?

Commissioner Maullar: Just the valuation of the property.

Mr. Bentley: And I assume also that we may put a witness on the stand and use him at this time, and have a right to recall him again on this or any other phase of the case.

[fol. 167] Chairman Klinger: Certainly.

[fol. 168] FRANK PRINGLE, called on behalf of the West Ohio Gas Company, being first duly sworn, testified as follows:

Examined by Mr. Bentley:

Q. State your name, please?

A. Frank Pringle.

Q. Where do you live, Mr. Pringle?

A. Lima, Ohio.

Q. What, if any, connection have you with the West Ohio Gas Company?

A. I am Assistant Secretary and Assistant Treasurer of the West Ohio Gas Company.

Q. How long have you been connected with that Company?

A. I was employed by the West Ohio Gas Company and its predecessor companies on October 30, 1911.

Q. And since that time?

A. I have continued in their employment.

Q. Continuously?

A. Yes, sir.

Q. In the Lima office?

A. Yes, sir.

Q. And in the beginning, what was your position?

A. I was office manager prior to the organization of The West Ohio Gas Company.

Q. And since that time, you have been Assistant Secretary?

A. Yes, sir.

Q. And Assistant Treasurer?

A. Yes, sir.

Q. And what is the fact as to your having been in actual active charge of their office and the office end of their business in Lima since its organization?

A. I have been.

Q. And where are the official records and evidences of [fol. 169] title and inventories of the company kept?

A. In the office at Lima.

Q. And under whose charge?

A. Under my charge.

Q. And how long have you been in that connection with these matters to which I have referred?

A. With the present company and its predecessors company since 1917.

Q. The last nine years?

A. Yes, sir.

Q. State generally, please, whether or not you are familiar with the inventories and books of inventory and record, map, and various evidences of title to the property, and with the physical property itself of the West Ohio Gas Company?

A. I am familiar with all the things you have outlined.

Q. And who has charge for the company of those records and files?

A. I do.

Q. How are the records and files so far as inventory and

listing of property and locations of property, how are they kept up?

A. Well, we keep a complete detail record of all property owned by the company, and as new capital is invested, the record is made as well as the record being corrected when an item of property is repaired or abandon-ed. Those things are done in order that we might have a continuous, complete, detail record of all property used by the company or owned by the company, rather.

Q. And in what form is the evidence of the title and location and character and kind of the various properties kept in your office?

A. Well, for example, we have a map of the city of Lima showing the length and size of each main installed in the [fol. 170] various streets of the city. This map is corrected daily as work is done on distribution or transmission lines.

Q. That is, if there are additions put in that is put on the map?

A. Shown on the may by sizes.

Q. Suppose there is a piece taken out somewhere?

A. It is removed from the map.

Q. And if there is a replacement, does that show on the map or on some record.

A. Unless there is some change in size; if there is no change in size, no additions are made on the map.

Q. And in addition to the map, what other system of keeping a record of such improvements, additions and replacements?

A. On the matter of services owned by the company, we have an individual record of each and every service owned by the company. As soon as a service is installed, the record is made in a field book; then when the record is returned to the plant, all the information showing the material used on the service is transcribed to a service record card and those cards are filed according to streets in numerical order.

Q. Of course, I assume you don't do that personally, but is is done under your direction?

A. Yes, sir.

Q. And you are familiar with it being done?

A. I am.

Q. And what is the fact as to its being accurate and kept up to date day by day?

A. It is.

Q. That is for the purpose, isn't it, of the Company's [fol. 171] own information, first?

A. Yes, sir.

Q. As well as the costs and so on?

A. Yes, sir.

Q. Have you had occasion from time to time in the past four or five years to keep yourself familiar with these various records?

A. I have.

Q. By reasons of rate hearings and other matters?

A. Yes, sir.

Q. Have you had appraisals made of this property heretofore?

A. We have had several appraisals made.

Q. When was the last one prior to the one about which I am about to inquire?

A. 1924, as near as I recall.

Q. And how complete and comprehensive was that?

A. That was complete in every respect.

Q. What was the occasion of making that appraisal?

A. Well, we had a rate hearing at that time.

Q. Before this Commission?

A. Yes, sir.

Q. And that appraisal was made at that time as a part of that rate hearing?

A. It was.

Q. And were you familiar with that appraisal and property at that time?

A. I was.

Q. Who made that appraisal?

A. Mr. Heyser.

Q. Of what company?

A. At that time the U. G. I. Company of Philadelphia.

Q. And in the preparation of that appraisal and inventory, in 1924, or '5 by Mr. Heyser, what, if any, assistance did you give or what personal contact did you have with [fol. 172] the work?

A. Well, I assisted and gave all the data and information that Mr. Heyser requested from us. Several of our clerks as well as myself worked with him in gathering all of the data pertaining to the property used and useful to service in the Lima District.

Q. To whom does the title or in whom is the title to all the property used in the City of Lima, District?

A. The West Ohio Gas Company.

Q. Now, in 1924, it was probably the predecessor company of the West Ohio Gas Company?

A. The present company began operation on December 1st, 1924.

Q. When was the appraisal?

A. It was made sometime, as I recall, during the fall of 1924. The case was not completed until the early part of 1925.

Q. Well, the same property owned by The Lima Gas Light Company?

A. Yes, and the Lima Natural Gas Company.

Q. The West Ohio Gas Company has acquired both those companies?

A. It has.

Q. Now, what, if any, appraisal has been made recently in connection with this present hearing?

A. An appraisal has been prepared.

Q. By whom?

A. By Mr. Heyser.

* * * * * * *

[fol. 173] Q. I assume the Commission knows, but we will ask it in the record, what is the nature of the gas service you furnish in Lima?

[fol. 174] A. Manufacture gas. We make a blue gas enriched with natural gas.

Q. And you obtain the natural gas from what source?

A. From the Ohio Fuel Gas Company.

Q. And by what means is it brought to the Lima plant?

A. Through a transmission line extending east of Lima.

Q. Owned by whom?

A. By the West Ohio Gas Company.

Q. Is that a necessary part of the Lima system?

A. Very necessary.

Q. And in addition to Lima, what other communities beyond Lima do you serve?

A. Beyond Lima?

Q. Yes.

A. Cridersville, Wapakoneta and Celina, Ohio.

Q. Those towns have nothing but natural gas?

A. Nothing but natural gas.

Q. You have been in the gas business since 1911?

A. Yes, sir.

Q. I assume, perhaps, that you have been around that office and organization about as long as anybody up there now?

A. I think I have, yes.

Q. Except, perhaps, Mr. Malone?

A. Mr. Malone and Mr. Lynch, I suppose.

Q. Mr. Lynch, Mr. Malone and you.

A. Yes.

Q. You are familiar, I assume, to some extent, with the gas properties?

A. Yes, sir.

Q. And you probably have some contact with the public in the office by which you find out whether the gas service is satisfactory or not, do you?

A. I do.

[fol. 175] Q. How intimate is that contact?

A. Personal contact. A great number of people call me personally over the phone in connection with service. I come in contact with a number of people in the office and——

Q. Well, you are the official to whom all those things come, are you not?

A. Yes, sir.

Q. What would you say to the Commission is the condition now and has been for the past two years of gas service in Lima generally to your customers?

A. Excellent.

Q. And state whether or not there is any complaint so far as service is concerned from your customers?

A. The only complaints we receive are from individuals, and on investigation, we find that the difficulty exists on the premises and in the property of the individual filing the complaint, and usually within just a short time, we overcome such condition.

Q. Well, is it or is it now a fact that such a condition called to your attention is immediately corrected?

A. It is.

Q. What would you say to the Commission is the standard of the working condition of the Lima system today, or

the first of this year or the first of March or within the last year?

(Question read.)

Mr. Landis: Standard of condition?

Mr. Bentley: I want him to state what the efficiency of the plant is.

Commissioner Huffman: You mean what is the average [fol. 176] working condition of the plant within the last year?

Mr. Bentley: Yes, or up to now, the efficiency of it. It is probably answerable by a percentage.

The Witness: The property owned by the company is rendering 100 per cent. service to its customers attached.

Q. You are not an engineer?

A. I am not.

Q. You don't assume to testify here as an expert as to the physical condition of the company?

A. No, sir.

Q. Nor its valuation?

A. No, sir.

Q. But in a general way and as to its now efficiency, you say it is 100 per cent?

A. You don't necessarily have to be an engineer to know that, because our service would be interrupted and a great number of complaints would come from the customers if the property was not maintained in excellent condition.

Q. Well, you would be peculiarly in a position to know that?

A. I certainly would.

Q. By reason of meeting the public?

A. Yes.

By Commissioner Huffman:

Q. You base your answer then on apparent satisfaction of customers?

A. Yes, sir.

By Mr. Bentley:

Q. Of course, what has been the policy of the company, Mr. Pringle, in the last—well, I will say since the West

Ohio got it for instance, which was the first of 1925, as to maintenance of the property, physical maintenance?

A. It is the policy of the company at all times to keep its property in excellent condition. In fact, under the terms [fol. 177] of the general mortgage on the property, we are obliged to maintain and keep the property in good condition for the protection of those that hold the bonds for which the property is pledged, and we do not under any circumstances neglect any of our property. As soon as we know of conditions existing that should be remedied, it is remedied post haste. In fact, we do not wait until it is called to our attention; frequently we make various kinds of inspections in order to determine the condition of our property because we can't permit it to suffer and waste.

Q. Well, outside the fact of your obligation under your general mortgage to keep the property in a certain condition of repair, do I understand you, it has been the general policy of the company to do that?

A. It has been, yes.

* * * * * * *

[fol. 178] Mr. Bentley: There has been some reference to a valuation that was made in a former rate hearing of this Commission, and an official valuation, of course, which has been referred to in Mr. Pringle's testimony. We think we would like to offer that as a part of Mr. Pringle's examination and have it made part of the record in this case for what it may be worth. It will fit right in.

* * * * * * *

[fol. 179] Chairman Klinger: It may be admitted.

Mr. Bentley: It may be labeled Company's Exhibit 2.

And thereupon the appraisal above offered was admitted in evidence on behalf of the West Ohio Gas Company and is hereby submitted by copy marked Company's Exhibit Number 2.

[fol. 180] And also—

Eugene L. Heyser, called on behalf of the West Ohio Gas Company, being duly sworn, testified as follows:

Examined by Mr. Goeke:

Q. You may state your full name, Mr. Heyser?
A. Eugene L. Heyser.
Q. Where do you live, Mr. Heyser?
A. Philadelphia, Pennsylvania.
Q. What is your profession?
A. Appraisal engineer.
Q. And what properties have you been most familiar — in your appraisal work, what kinds of properties?
A. Public Utilities' properties including gas, electric, street railway, water, steam heat and telephone.
Q. You may state to the Commission what training you have had in this profession?
A. You want my full training.
Q. Yes.

Commissioner Maullar: Let me suggest. Did you qualify in a former hearing here?
The Witness: Yes, sir.
Commissioner Maullar: In detail.
The Witness: Yes, sir.
Commissioner Maullar: Will it be satisfactory to copy that into the present record.
Mr. Landis: Sure.
Commissioner Maullar: If that is agreeable by stipula-
[fol. 181] tion, the qualifications in the former hearing might be copied into this record.
Mr. Bentley: That is agreeable, except if the Commissioner please, Mr. Heyser, has had some two years' experience since that.
Mr. Maullar: Well, it might be added.

(The qualifications of Mr. Heyser as contained in the record of The West Ohio Gas Company versus the City of Kenton, is as follows:

"A. I graduated from the Williamson School in Williamson, Delaware County, a preparatory technical school in 1897 and later took the course of engineering at the Drexel Institute, Philadelphia, from which I was graduated in 1911.

"Q. And since 1911 how much of the time have you spent in the practice of this profession?

"A. I don't mean 1911—may I change the record; 1901.

"Q. 1901. Since that time what portion of the time have you spent in the practice of your profession?

"A. My first business experience was with the Delaware River Ship Building and Engine Company at Chester, Pennsylvania.

"Q. In what year was that?

"A. From about 1901 until 1904 and '05.

"Q. I wish you would come on down from those dates and give the various employments in which you have been engaged in this special work, what the work was and who for and where*o* and so on so as to give this commission your qualifications.

"A. With the Delaware River Ship Building and Engine [fol. 182] Company I took a practical course in the shop as an apprentice, going through the various shops and departments of that concern. Later I spent two years with the American Bridge Company at i-s Pencoid plant; seven years with the Baldwin Locomotive Works in the engineering department, during the latter part of which time I had charge of certain work in connection with the construction and repairs of locomotives.

"About 1909 I was employed by the United Gas improvement Company in its engineering department, and worked for a time in the drawing room upon design of gas producing apparatus and auxiliary apparatus connected with the production of gas.

"About 1910 I was assigned to the appraisal division and assisted in making inventories and appraisals of utility properties, either owned by the company or in which it was interested.

"In 1911 I was given charge of this work and have had charge of the United Gas Improvement Company's appraisal division since that date with the exception of about three years from 1916 to 1919, during which time I was an assistant engineer in the engineering bureau of the Public Service Commission of Pennsylvania. In the latter part of 1919 I returned to the United Gas Improvement Company and have been since that time appraisal engineer for it and the U. G. I. Contracting Company.

"Q. What is the business of the United Gas Improvement Company and the U. G. I. Contracting Company, gen- [fol. 183] erally?

"A. The United Gas Improvement Company is a hold-

ing and operating company operating gas, electric and street railway utilities in the eastern part of the United States.

"Q. Located where?

"A. They are located at Allentown, Reading, Harrisburg, Norristown, Wayne, Ardmore, West Chester, Pennsylvania; Fulton County—or rather Cloversville, Johnstown, Syracuse, New York; Concord, Manchester, New Hampshire; Sioux City and Burlington, Iowa, Des Moines, Iowa, Omaha, Nebraska. Do you want all which are operated now or have been?

"Q. No, just some idea of the extent of the operation.

"A. Omaha, Nebraska, Kansas City, Missouri; Kansas City, Kansas; Nashville, Tennessee, Vicksburg, Mississippi; St. Augustine and Pensacola, Florida; Savannah, Georgia; Charleston, South Carolina——

"Q. Well, that will be enough, Mr. Heyser. Now, these various companies are owned or have been owned and controlled by the parent company, the U. G. I. Company?

"A. Yes, sir.

"Q. And they are gas companies and other kinds of utilities, are they?

"A. Gas, electric and street railway.

"Q. What, if anything, have you had to do with the appraisal of any of these properties, have you had anything to do?

"A. Yes, sir, I have had charge of making appraisals of all of these properties.

"Q. Do you recall any other appraisals that you have [fol. 184] made in the last 15 or 20 years?

"A. Yes, sir.

"Q. Give some of them in that record.

"A. Maysville, Kentucky——

"Q. What is that?

"A. Gas, Electric and street railway.

"Q. All right.

"A. Valley Electric Company with home offices at Wausau, Wisconsin, operating electric, gas and street railway properties in the Wisconsin river valley, covering a territory of probably 150 miles long and 50 miles wide; the Hyde Park Gas Company at Scranton, Pennsylvania; the properties owned by the West Ohio Gas Company located at Lima, Wapakoneta, St. Marys, Celina and Kenton, prop-

erties owned and operated by the Connecticut Light & Power Company with home offices in Waterbury, Connecticut, operating gas, electric and street railway properties in the western part of Connecticut; gas properties at Mohawk, New York, owned by the Mohawk, Hudson Power Company; and during my association with the Public Service Commission of Pennsylvania, I assisted in, or had direct charge of making inventories and appraisals of the properties owned by the Bell Telephone Company of Pennsylvania, Springfield Consolidated Water Company of suburban Philadelphia, the Spring Brook Water Supply Company, Wilkes-Barre, Pennsylvania, and the gas properties owned by the Pennsylvania Gas Company in western Pennsylvania; street railway company in Erie, Pennsylvania, and other smaller jobs, smaller companies.

"Q. Is the Public Service Commission of Pennsylvania a commission similar to the Utilities Commission of Ohio?

[fol. 185] "A. Yes, sir.

"Q. Having control over and regulations of Utilities in Pennsylvania?

"A. Yes, sir.

"Q. And do they have in Pennsylvania similar provisions as to the law of Ohio in which rates are regulated, based upon valuations?

"A. Yes, sir.

"Q. Appraisals are necessary in that regard?

"A. Yes, sir."

[fol. 186] Q. You may state briefly, if you can, to the Commission, what experiences you have had since you last testified in a rate hearing case here; I think the last case you testified in was the——

A. Kenton case, no I guess the Celina case was later than Kenton.

Q. No, I believe you testified here on the 19th of October, 1926, in the Kenton Gas Rate case?

A. Yes, sir.

Q. You stated in detail then your experience and so forth in this work?

A. Yes, sir.

Q. Now, what property have you appraised, if any, since you testified on October 19, 1926, in the Kenton case, or sin-e you appraised that Kenton property?

A. Burlington Light & Power Company, Burlington, Vermont, including both gas and electric departments. Bangor Gas Light Company, a gas property, Bangor, Maine. The Philadelphia, Wilmington, Traction Company, properties located between Philadelphia and Wilmington, Delaware including electric and street railway properties. Wayne Steam Heat properties, Wayne, Pennsylvania; and general inspection and short cut valuations of properties owned by the Philadelphia Suburban Counties Gas & Electric Company adjacent to Philadelphia for the purpose of merger and revision of insurance. Bristol Plainsville Gas & Electric Company at Bristol, Connecticut, including gas, electric and steam heat departments. Norwalk Gas Company, Norwalk, Connecticut. In addition to these detailed inventories and [fol. 187] appraisals cited, the valuation department of which I am in direct charge, has prepared valuations of all system companies operated by the U. G. I. for the purpose of renewal of insurance; also several properties for the purpose of refinancing.

Q. Mr. Heyser, tell the Commission whether you have ever held any position with any of the states of this union that required you to deal with valuations of utilities properties, gas properties?

A. From October, 1916, to the latter part of 1919, I was with the Pennsylvania Public Service Commission as an assistant engineer in the Bureau of Engineering. The duties assigned to me while with the Commission included inspections of properties for service complaints, the preparation of detailed inventories and appraisals, and the holding of hearings as a special examiner.

Q. State briefly the character and extent of the appraisal company that you represent, the character of its work and how it is organized, as to its ability and so forth to make these appraisals?

A. The United Gas Improvement Company of Philadelphia was organized about 45 years ago for the purpose of managing and operating gas properties. It has been in that business since that time and has grown to be one of the important utility companies in this country. During the period of its operation, it has owned either entirely or partly through stock ownership or it has leased and operated many [fol. 188] gas, electric street railway and steam heat properties.

Q. I direct your attention particularly to the appraisal branch of it.

A. In the early days of regulation it became necessary for the various companies operated by the U. G. I. to enter into rate litigations, and the problem of separation was given serious consideration. At that time, the engineering department undertook to take care of the preparation of the inventories and appraisals, and about the beginning of 1910, it created a valuation department. I was employed by the company in September, 1909, and beginning 1910 was transferred to the valuation department.

Q. Now, state to the Commission whether you are familiar with the West Ohio Gas Company, with its Lima Gas property?

A. Yes, sir, I am familiar with it.

Q. How often or how long have you known that property?

A. I first was called in to make an inventory and appraisal or help to make an inventory and appraisal in September, 1921.

Q. 1921?

A. Yes, sir.

Q. Did you then examine the property?

A. Yes, sir.

Q. When were you again called in to make an appraisal?

A. I think it was about 1923.

Q. Three or four?

A. 1923.

Q. '23?

A. Yes.

Q. Did you then make an examination of the property?

A. Yes, sir.

[fol. 189] Q. And an appraisal of it?

A. Yes, sir.

Q. And when were you again called in if at all?

A. In the latter part of 1924.

Q. Did you then again make an examination and appraisal of the property?

A. We made a thorough examination and a complete detailed inventory and appraisal of the properties which had been owned by——

Q. For what purpose was that appraisal made?

A. A rate case.

Q. Pending in this Commission?

A. Yes, sir.

Q. Is that the appraisal to which reference was made here a while ago?

A. That is the one I assume was referred to. That was as of January 1, 1925.

Q. Now, when, if at all, were you again called in to make an appraisal?

A. The early part of May, 1928.

Q. 1928. State to the Commission how you go about making or how did you go about making *or how did you go about making* the appraisal of the Lima property for this hearing?

A. After discussing the whole problem with Mr. Curtain, President of the West Ohio Gas Company, we were authorized to prepare a complete detailed inventory and appraisal of the properties owned by the West Ohio Gas Company used and useful in the service of manufactured gas to customers in the Lima district, as of the date of filing of a city ordinance.

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[fol. 190] Mr. Goeke: We will offer in evidence, Your Honor, Exhibits 1, 2, 3 and 4, each separately.

Chairman Klinger: They may be admitted.

And thereupon the exhibits above offered were admitted in evidence on behalf of the West Ohio Gas Company and are herewith submitted, marked respectively Company Exhibit Numbers 1, 2, 3 and 4.

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[fol. 191] Before The Public Utilities Commission of Ohio

No. 5137

In the Matter of the Appeal of The West Ohio Gas Company from Ordinance of the City of Lima, Ohio, passed March 19th, 1928, fixing Price for Gas in said City

Proceedings

Before Hons. William Klinger, Chairman; J. W. Huffman and F. B. Maullar, Public Utilities Commissioners, Tuesday, November 20th, 1928

Appearances: Messrs. J. H. Goeke and H. O. Bentley, on

behalf of The West Ohio Gas Company. Mr. Paul T. Landis, City Solicitor, on behalf of The City of Lima, Ohio.

[fol. 192] Morning Session

Tuesday, November 20th, 1928.

Chairman Klinger: The matter for hearing this morning is the Appeal of The West Ohio Gas Company from Ordinance of the City of Lima, passed March 19th, 1928, fixing price for gas in said City, being Cause No. 5137. Are the parties ready to proceed?

Mr. Bentley: We are ready.

Chairman Klinger: I believe this is a further hearing for purposes of cross-examination of the Company's witnesses?

Mr. Bentley: We have the witnesses here for cross-examination.

Mr. Goeke: Do you want to cross-examine our witnesses?

Mr. Landis: Do you have anything further you want to introduce before cross-examination?

Mr. Goeke: No.

Mr. Bentley: We have not rested our side.

Mr. Landis: Oh, no; I understand.

Commissioner Huffman: The witness for cross-examination may take the stand.

Mr. Landis: I will call Mr. Pringle.

[fol. 193] And also—

Frank Pringle, called for purposes of cross-examination, having been heretofore duly sworn, continued his testimony as follows:

Cross-examined by Mr. Landis:

Q. You are Mr. Pringle, who testified here in this case in direct examination?

A. I am.

Q. On the 12th day of July, 1928?

A. Yes, sir.

Q. You live in Lima, do you, Mr. Pringle?

A. I do.

Q. Where do you live in Lima?

A. 1638 Wendell Avenue.

Q. Are you married?

A. Yes, sir.

Q. How long did you say you had been connected with the gas properties in Lima, the West Ohio and its predecessors?

A. 17 years.

Q. And you stated, I believe, that you were the assistant secretary and assistant treasurer of The West Ohio Gas Company?

A. Yes, sir.

Q. And as such you are the general office manager?

A. Yes, sir.

Q. And as such office manager you have in your possession or in the possession of the Company and your office the records of the Company?

A. I do.

Q. Relative to their properties and all other records of the Company?

A. Yes.

Q. And you are familiar with them?

A. Yes, sir.

Q. In other words, you are familiar with all the Com-
[fol. 194] pany's Business?

A. Yes, sir.

Q. And all transactions connected with the Company that it is engaged in in Lima?

A. Yes, sir.

Q. Where else are you engaged in business—The West Ohio Gas Company?

A. We distribute natural gas at Kenton, Cridersville, Wapakoneta, St. Marys and Celina, Ohio.

Q. Are these various communities you have just enumerated all served from the transmission line that runs east of Lima and Kenton?

A. Yes, sir.

Q. How long is that line from Lima eastward to the source of your supply?

A. How long is it, you say?

Q. Yes.

A. Approximately 45 miles.

Q. About 43 and some tenths?

A. Yes, sir, somewhere along in there.

• • • • • • •

[fol. 195] Q. Now you stated, Mr. Pringle, in your direct-examination, I believe, that the records and accounts and so

on that were audited by Kay & Tabler during the month of October, 1927, were the same records used by Mr. Heyser in making his appraisal; is that correct?

A. In part.

Q. How much?

A. Well, they did not make as exhaustive a study as Mr. Heyser did; they were there from the standpoint of operation, to see what the Company was doing as to revenues and expenses.

Q. You don't know that Kay & Tabler examined all the records used by Heyser in making up his appraisal?

A. No, I could not tell you that.

Q. Do you know what plant records were examined by Kay & Tabler, if anything?

A. No, I do not.

Q. It is a fact, is it not, that Kay & Tabler made an auditor's report of the books of this Company only as far as you know?

A. Well, I would say this, Mr. Landis, in answer to that question; we showed Kay & Tabler where all records and books of the Company were kept and told them to help themselves; just what all they did, I do not know, but I do know they audited it from the standpoint of revenue and [fol. 196] expenses, and any additional information they got I do not know anything about.

Q. And that was in your main office up on Market Street?

A. Yes; all records were available to them.

Q. But the plant records, a lot of them, are down at the manufacturing plant?

A. Just what do you mean by "plant records"?

Q. Well, the records of all these properties and materials and inventories and supplies, etc.?

A. The store room records are down there, the materials and supplies, but of all the physical plant and all that stuff is there in the Lima Office; the map which you refer to, that would be of no value to Kay & Tabler; that is hanging on the wall at the plant; but the records of the Company were available to Kay & Tabler. Whether they utilized their opportunity or not I do not know.

Q. You mean the map showing the location of the pipe you talked about awhile ago?

A. Yes, sir.

Q. I have forgotten whether you stated that you served

Celina and St. Marys also east and south of—or west and south of Lima?

A. Yes, sir.

Q. And now where do you furnish gas—your Company furnish gas east of Lima?

A. To Kenton.

Q. Where else?

A. That is all—and some farmers residing along the transmission line out I would say about seven or eight miles east of Lima, and that is all.

Q. Seven or eight miles east of Lima?

A. Rural consumers residing along side the transmission line.

Q. Does that transmission line follow the Harding Highway?

A. It does practically all the way.

[fol. 197] Q. Practically all the way to Kenton?

A. Yes, sir.

Q. And east of Kenton?

A. Well, no, it goes southeast of Kenton; it goes out the Forrest Pike, as I recall it, I think up in that neighborhood.

Q. You own all that pipe between Kenton and Lima?

A. Yes, sir.

Q. And you say you only serve rural users about eight miles east of Lima?

A. In addition to Kenton, that is all.

Q. No little towns between?

A. No, sir.

Q. In your direct-examination you made the statement that the condition of the service—in answer to a question put to you as to the condition of the service in Lima to your customers generally, you said it was excellent?

A. Yes, sir.

Q. And that is true?

A. Gas service you refer to?

Q. Yes.

A. Yes, sir.

Q. And you say your Company supplies good service to consumers in Lima?

A. We sure do.

Q. Who told you it was good?

A. Who told me it was good?

Q. Yes.

A. By virtue of the fact we have no complaints from customers on service.

Q. You have no complaints from customers on service?

A. We do have a few minor complaints—always would, but we have no great number of complaints, and we know we maintain a uniform pressure throughout each 24 hours, and that is an indication of satisfied customers. If the [fol. 198] pressure fluctuated, for instance, like it did when we were on natural gas entirely, of course the service was not good.

Q. What is your fluctuation?

A. We have no fluctuation.

Q. No fluctuation of what?

A. Of gas pressure; we maintain a uniform pressure.

Q. What is that pressure?

A. Two inches.

Q. Two what?

A. Two inches; now please don't ask me to explain that.

Q. Two inches of what?

A. Water pressure, but please don't ask me to explain that as I am not an engineer. I do know we carry two inches of pressure as indicated by the gauge in the office.

Q. You keep a gauge in the office?

A. Yes, and also at the plant.

Q. Has there been any fluctuation in your heating plant?

A. No, sir.

Q. Any fluctuation in your B. T. U. units?

A. That is the heating value; it must be constant; in other words, you cannot serve 400 B. T. U. gas today and 600 tomorrow and 700 the next day, because you would have all the consumers in Lima and elsewhere on your neck.

Q. What B. T. U. do you furnish?

A. Approximately an average of about 550.

Q. At the present time?

A. Yes, sir.

Q. And have been for how long?

A. Quite some time.

Q. How long?

A. Oh, I think three or four years.

Q. Three or four years?

A. Yes, sir.

Q. An average of 550?

A. I think so, yes, sir.

[fol. 199] Q. Do you know?

A. I think so, yes, sir.

Q. You do keep a complaint department and have an appropriation for that purpose, don't you?

A. We do, yes, sir.

Q. Are they satisfied, everybody satisfied; are they satisfied with the price they pay for gas?

Mr. Goeke: We object.

Q. You say it is excellent service because they are satisfied.

Mr. Goeke: He said there wasn't any complaints about the service. Price hasn't anything to do with it.

The Witness: Service is one thing and price is another. If gas is ten cents or fourteen thousand dollars it would not interfere with the supply of gas going into the premises.

Q. Are they satisfied with the price?

Mr. Bentley: I object to the question.

Chairman Klinger: I suppose that is not material to the question before the Commission.

Q. Well, is there any fluctuation in the range of the flame temperature of the gas distributed?

A. Not to my knowledge.

Q. Do you have a gauge that shows anything in relation to that?

A. We have two recording gauges, one for the purpose of showing pressure, the other showing the British Thermal Units in the gas.

Q. Are they both in your general office?

A. The calorimeter recording British Thermal Units is installed at the plant as well as a gauge, and we also have [fol. 200] a gauge in the office on Market Street.

Q. Well, all these facts that I have enumerated to you would enter into the question of whether the company was rendering excellent service?

A. I would consider everything—taking everything into consideration, we are rendering excellent gas service.

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[fol. 201] Q. This water gas, you make a water gas there, don't you?

A. Yes, sir.

Q. And mix it with natural gas; that is your system now?

A. We enrich it with natural gas.

Q. You enrich it with natural gas?

A. Yes, sir.

Q. Is it carbureted with any other product, like oil?

A. No, we use natural gas in lieu of Oil. Of course we use coke and coal——

Q. That is in the production of your water gas?

A. Yes.

Q. Do you use any enricher outside of natural gas?

A. Only when the natural gas supply is inadequate; then we are obliged to enrich with oil.

Q. Do you?

A. We do when natural gas is low, such that we do not have enough.

Q. Do you know what the B. T. U. value of that water [fol. 202] gas is before it is mixed with the natural gas?

A. Just a minute, please; somewhere near 300.

Q. That is before it is mixed with the natural gas?

A. Yes.

Q. Who do you purchase your natural gas from now?

A. The Ohio Fuel Gas Company.

Q. And they are successors to whom?

A. The Ohio Public Service Company.

Q. Now this manufacturing plant you have got down there where you make this water gas is what was formerly The Lima Gas Light plant, wasn't it?

A. Yes, sir.

Q. Owned by The Lima Gas Light Company?

A. Yes, sir.

Q. Was that a corporation?

A. It was.

Q. And it had no connection with the Lima Natural Gas Company?

A. No, sir; a separate and distinct corporation.

Q. For years they manufactured a gas for what purpose?

A. For lighting purposes only.

Q. Lighting purposes only; illuminating?

A. Yes, and some people did utilize it for fuel purposes when natural gas—the supply was so low that they could

not use natural gas or had no natural gas, rather, a number of instances where people had both the manufactured and natural gas in the premises, they utilized manufactured gas when the natural gas was not sufficient.

Q. Well, you used that almost altogether for illuminating purposes??

A. Chiefly, yes, sir.

Q. And some of that illuminating was for domestic purposes and some of it was for commercial and some of it [fol. 203] was for street lighting purposes?

A. Yes, sir.

Q. Do you know how many street lights, approximately—I do not care exactly—The Lima Gas Light Company had installed in the City of Lima?

Mr. Goeke: I object to that; what is the purpose of it?

Chairman Klinger: I do not know what his purpose may be.

Mr. Landis: I will connect it up after a bit; I do not want to reveal the purpose just now.

The Witness: Oh, as near as I remember, somewhere in the neighborhood of 300, as near as I remember.

Q. And they were located——

A. In various sections of the city, yes, sir.

Q. Those were in the form of standards with a light on them.

A. Yes, sir.

Q. Looked somewhat similar to our present boulevard lights in form?

A. Yes, sir.

Q. Did you have some on West Market Street?

A. Yes, sir.

Q. And West Wayne Street?

A. Yes, sir.

Q. And West High Street?

A. I think so.

Q. How far west did they run on Market Street?

A. Oh, I don't know, Mr. Landis.

Q. Well, they run out from your manufacturing plant, in all directions from the plant?

A. Yes, sir.

Q. The lights; and your commercial lighting before—or I mean your domestic lighting before electric light be-

came prevalent, that was rather extensively used over the [fol. 204] city, wasn't it, by customers of The Lima Gas Light Company?

A. As I remember, when I was connected with the Company 17 years ago, the gas lighting business was at its best, and as I recall they had approximately 3000 customers.

Q. 3000 customers?

A. Yes, sir.

Q. In various sections of the city?

A. Yes, sir.

Q. That were served by means of mains and distribution system from the gas light plant?

A. Yes, sir.

Q. You say you were connected with this Company also in 1911?

A. Yes, sir.

Q. They were both operating from the same office, the same corporations?

A. Yes, sir, controlled by the same people.

Q. Who were they?

A. At that time they were controlled by The Indiana Lighting Company, when I first went with the Company, and later The United Gas Improvement Company of Philadelphia acquired control.

Q. Who did you say?

A. The United Gas Improvement Company of Philadelphia.

Q. Is that the U. G. I. Company that Mr. Heyser speaks of?

A. No; Mr. Heyser was connected with the U. G. I. Contracting Company.

Q. The United Gas Improvement Company?

A. Yes, sir.

Q. When did they control these two plants?

A. They acquired control I think somewhere around 1915; somewhere around there.

Q. That is The United Gas Improvement Company of Philadelphia?

A. Yes, sir; they acquired control from The Indiana [fol. 205] Lighting Company.

Q. And they retained control until when?

A. Until——

Q. Until the incorporation of The West Ohio Gas Company?

A. Well, no, I think around 1920 or 1922, as near as I recall, the present controlling interest acquired control.

Q. The present controlling interest?

A. Yes.

Q. Who is that?

A. The Midland Utilities of Chicago.

Q. How much of it do they control now?

A. By virtue of the ownership of common stock.

Q. I say how much of it do they own now?

A. Of what?

Q. Control; what proportion?

A. They have a managing control of the Company by virtue of the ownership of the common stock, which has voting rights, and the preferred stock has none.

Q. Do they have all the common stock?

A. They do except the one share that Mr. Bentley and Mr. Curtain and Mr. Curtain, Jr., has.

Q. That is just the qualifying shares?

A. The qualifying shares for directors, yes, sir.

Q. Well, so you think it was in 1922 or 1923 that this Chicago——

A. 1920 or 1922, right along there.

Q. That this Chicago concern acquired the controlling interest?

A. Yes, sir.

Q. What is the name of that Company?

[fol. 206] A. The Midland Utilities Company.

Q. And are they the present controlling powers?

A. Yes, sir.

Q. They control The West Ohio Gas Company?

A. They do.

Q. And all its activities east and west of Lima?

A. Yes.

Q. And in all these cities and communities you mentioned?

A. They do.

Q. Who is the moving or controlling mind in that?

A. Mr. Samuel Insull, Jr., is president.

Q. But up to that time The United Gas Improvement Company of Philadelphia was the controlling power of both The Lima Natural Gas Company and The Lima Gas Light Company; is that right?

A. Yes, sir.

Q. Now when was it that these companies that you have been working for, either The Lima Natural Gas Company or The West Ohio Gas Company, commenced furnishing this manufactured product, as you call it, wherein you use a mixture of water gas and natural gas?

A. Oh, I think around 1923 or 1924.

Q. 1923 or 1924?

A. 1923 or 1924; I can't remember exactly, but I think it was somewhere in that neighborhood.

Q. It was prior to the formation of The West Ohio Gas Company?

A. It was, yes, sir.

Q. Now you made an appraisal or had an appraisal made and introduced here as an exhibit in connection with the rate hearing before this Commission for The Lima Nat- [fol. 207] ural Gas Company in 1924, didn't you?

A. Yes, sir.

Q. And prior to that time you had a rate hearing here before this Commission, at a prior time?

A. Yes.

Q. When was that; in 1921?

A. The last Commission's order, or the last order issued, rather, by the Public Utilities Commission of Ohio was issued over date of April 25th, 1925; that is the last hearing. That was the last record we had of a hearing on rates pertaining to Lima.

Q. But prior to that, you made your appraisal for this

A. There was an appraisal made for the selling of these properties.

Q. And that was made in 1924?

A. Yes, sir, along in the summer of 1924, as I remember it.

Q. But prior to that, about three years or such a matter, you had a rate hearing before this Commission, at which time you introduced an appraisal at that time?

A. Well, I assume we did have one; we have had several, I do not recall.

Q. Do you know when it was—your rate that expired in 1924 had become effective as of what time; September, 1921, wasn't it?

A. I am not sure, Mr. Landis.

Q. Now this Lima Gas Light plant was located at the place where your present manufacturing plant is now?

A. Yes, sir.

* * * * * * *

[fol. 208] Q. You stated to me this morning that the old Gas Light Plant had approximately 3000 customers at the [fol. 209] time it was going at its best, along about 1916 or 1917, would you say?

A. No; I said when I came with the Company about 17 years ago.

Q. It had about 3000 customers?

A. Approximately, yes, sir.

Q. And those customers were served off of distribution lines that were separate and apart from the mains of The Lima Natural Gas Company?

A. Yes, sir.

Q. And how many miles of pi*l*e lines were then owned and used by The Lima Gas Light Company in that business of furnishing illuminating gas?

A. I do not recall the exact mileage of pipe lines owned by The Gas Light Company.

Q. Well, will you make a note of that and find out for me at a later date?

A. Yes.

Q. What kind of pipe constituted these mains and pipes that were used in connection with the distribution system of this Gas Light plant?

A. Wrought and steel.

Q. And some cast iron?

A. I suppose; I am not real sure.

Q. Do you know anything of the sizes of those mains and pipes?

A. There were various sizes.

Q. Ranging from what?

A. I think from two inch up.

Q. Up to what?

A. Oh, I imagine the largest line of the Gas Light Company was perhaps ten inch; I am not real certain of that, however.

Q. And in these same streets, of course, you had—the same streets in which you had the mains and distribution

[fol. 210] system for the distribution of gas light by the Gas Light plant, you had the mains and distribution system for your natural gas?

A. Yes.

Commissioner Maullar: Are you claiming a duplication in the present set-up, Mr. Landis?

Mr. Landis: I don't know yet, Your Honor; we will find out.

Q. What became of these mains and distribution system of The Lima Gas Light Company's pipes when the two companies were merged; that is, when they combined the service?

A. Some of them were abandoned; in some cases some of the lines were taken up and the rest of the property, or the rest of the lines were tied in with the natural gas distribution system.

Q. How much of these pipes was taken up?

A. Well, I could not answer that offhand.

Q. You can find out?

A. Yes.

Q. You say some of them were abandoned?

A. Yes, sir.

Q. What do you mean "abandoned"?

A. Well, it was under permanent paving; besides, the lines were not necessary and we simply left them there because it would be cheaper to leave them under the pavement than to remove them.

Q. And you say some of the others were tied in to the system of The Lima Natural Gas Company?

A. Yes; in order that a more equal distribution of gas might be given to the customers that would bring about the excellent service referred to this morning.

[fol. 211] Q. What do you mean "Equal distribution"?

A. Well, the more pipe lines you have and the larger and the greater area you touch you get a more equal distribution of your gas to your customers.

Q. In other words, if you have a small pipe in this particular location and a larger pipe adjacent to it, the one with the larger pipe would get better distribution than the one that had a smaller pipe; is that what you mean?

A. Yes, and in addition to what you say, we found a lot of customers that were on artificial gas lines and there

wasn't a natural gas service running into the premises, and by tying the lines in we were permitted to use the gas served at that time through the old artificial system, meaning that if the artificial service into that particular place or those particular places had been abandoned, it would have been necessary to run a line from the present system in, and in many instances that was impossible, owing to the fact that the service line from the main to the curb was under permanent paving; and if you already have an artificial service going into that building from the artificial line, by tying that artificial line to the natural gas line we were able to reach a great number of customers that had been using artificial gas entirely and not natural gas at all.

Q. But these mains were located in many instances—in most instances, in streets in which you had the natural gas mains?

A. Well, I refer—in my answer I referred chiefly to the business district of Lima where we had the largest number of artificial users in the apartments and blocks down town.

[fol. 212] Mr. Landis: Just read that question.

(Question read.)

A. In some instances they were; I would not say in most instances.

Q. In what proportion?

A. Well, I could not answer that offhand.

Q. Can you find out?

Mr. Bentley: Do I understand these things you want him to find out, that we are to furnish them?

Mr. Landis: Yes, so he can answer the question at another time, or if you want to furnish them to me so I can introduce them as an exhibit, all right.

Mr. Bentley: I just wanted him to understand it, is all.

Q. You understand what I mean?

A. Yes.

* * * * * * *

[fol. 213] Q. Has this manufacturing plant where you manufacture water gas that you speak of been enlarged by the addition of any buildings since it was merged with the property of The West Ohio Gas Company?

A. Yes.

[fol. 214] Q. What?

A. They were in the midst of building some additions to the plant at the time of the merger; an addition to the generator house was built; a new governor house was built.

Q. What is the purpose of the governor house?

A. To govern the flow of the gas in and out of the plant; and the buildings located at the fence line on the Jackson Street side just south of the superintendent's office; we also built a new storage warehouse and garage, a combination, and two drip houses; that is all I recall at this time.

Q. What is a drip house?

A. The purpose of a drip house—I am afraid I will get into too technical ideas for me; we have low places in the line where moisture, etc., gathers in the line, and the purpose of drip houses is to permit this moisture or water to escape or pump to drips.

Q. Out of the distribution system?

A. Well, these drip houses are right at the plant and of course we have drips throughout the town.

* * * * * * *

[fol. 215] Redirect examination.

By Mr. Bentley:

Q. Mr. Pringle, you were asked a question this morning—I don't think it was very material, but I think you were in error about it, of the pressure you maintain; you spoke of it in inches.

A. I spoke of two inches, whereas I should have said two ounces, and four inches of water pressure, which in terms express two inches of water pressure; I said two inches this morning instead of two ounces; two ounces are equivalent to four inches of water pressure, is what I meant to say.

Q. Now there has been considerable inquiry of you as to the Lima Gas Light Company, which I assume goes to the question of duplication, if anything, you said the Gas Light [fol. 216] Company had reached its peak about fifteen years ago?

A. Yes, sir.

Q. That was principally for illuminating purposes, both residence and street, wasn't it?

A. Yes, sir.

Q. The illuminating—street illumination was entirely gone, was it not, at the time you merged the properties?

A. It was abandoned prior to the merger, several years before that.

Q. And the house lighting practically the same thing?

A. Just about.

Q. And the Gas Light Company's lines, where they were in the streets with the natural gas lines, were usually on opposite sides of the street, weren't they?

A. They were.

Q. Like Market, for instance, and Main Street; so that when you merged the companies and quit the artificial gas business alone you said that you tied in those lines and used them as natural gas lines in some instances?

A. Yes, sir.

Q. And in some instances where it was not profitable you abandoned them under buildings and under pavements and under sidewalks and left them there?

A. Yes, sir.

Q. And they are there yet?

A. Yes, sir.

Q. And some amount you took up?

A. Yes, sir.

Q. I will ask you whether any part of these lines was included in the valuation which Mr. Heyser submitted here except those which are used in the natural gas business?

A. Only those that are used and useful.

Q. And the other two are not at all included in the amounts of pipe, are they?

A. They are not.

[fol. 217] Q. Now, for instance, on Market Street where you tied the lines, the artificial lines on one side of the street, and used it as a supply line, was that economical to do that rather than to increase the size of your natural gas line?

A. We considered it a very wise thing to do and very economical because we eliminated a lot of labor costs and additional material cost by tying the two lines together.

Q. And aside from getting better service as you have explained in answer to Mr. Landis, the fact is that the town has grown westward a mile or two in the last fifteen years, hasn't it?

A. It has.

Q. And without the use of those lines you probably would have had to increase your main natural gas line?

A. And in addition to that we perhaps would have had to construct a gas holder at some advantageous point in the western part of the city.

Q. Besides the expense and inconvenience to the public of digging up the pavement and putting in a new line, etc.?

A. That is true.

* * * * * * *

[fol. 218] Q. I think you said, but I will ask you again to be sure, whether or not in this valuation which Mr. Heyser [fol. 219] prepared and which has been submitted here, there is included a single foot of pipe that was formerly a part of the artificial or Lima Gas Light system that is not used or useful now in the natural gas business or the mixed gas business as it is now?

A. Absolutely none.

* * * * * * *

[fol. 220] Q. There has been some comment about dissatisfied customers and the kind of service you give, Mr. Pringle; you are somewhat in touch with that, are you not?

A. I think I am more intimately in touch with that than——

Q. Well, aren't you the one to whom complaints come in the office?

A. Not within the last year; I do receive a great number of complaints.

Q. They eventually reach you, don't they?

A. A great number of them do, yes, sir.

Q. Has there been at any time in the last three years a complaint that the service was not sufficient and adequate and the quality of the product furnished was not good?

A. We received no complaints of that, no.

Q. Now there has been considerable cross-examination [fol. 221] of you about the inspection that was made, which inspection was made, as I recall, after the passage of the ordinance that is involved in this hearing?

A. Yes, sir.

Q. You have been through some other rate hearings, I believe, in your connection at Lima?

A. I have.

Q. The last valuation made on this property was somewhere about 1925, was it not?

A. For rate making purposes, yes, sir.

Q. Would you be able to tell the Commission offhand—and it may not be exactly correct—but can you tell in round figures how much the Company has expended on this plant since 1925 in the way of betterments?

A. Approximately $195,000.00, new additions to plant since the last valuation determined by The Public Utilities Commission of Ohio.

Q. Those figures are available from your records, are they not?

A. Yes, sir.

Q. Now the first inspection, or audit, rather, that was made was made by Kay & Tabler?

A. It was.

Q. They were employed by the City Commission of Lima to audit your books?

A. They were.

Q. And they are a reputable firm?

A. They are.

Q. And competent?

A. They are.

Q. And they came to your office and were there for how long?

A. I would say approximately 30 days.

Q. And in that time you state you turned everything over to them?

A. We did.

Q. And they had all your vouchers and records and ledgers and everything were there for their use if they wanted them?

A. Everything they asked for, and we even gave them [fol. 222] a lot of information they did not ask for that we thought was practical.

Q. Those vouchers to which Mr. Landis referred this morning, how far back do you keep them; of course you do not keep them forever, but how far back?

A. Oh, four or five years.

Q. Would you say as much as five?

A. In some instances, yes; there is a great number of vouchers issued every year and they occupy a great deal of filing space, so we are obliged from time to time to destroy old records of that kind in order to make room for the new stock.

Q. I want to refer—you spoke of the valuation in 1925 and since that time you had added approximately so much money?

A. Yes.

Q. By whom was that valuation made?

A. The final valuation fixed by the Public Utilities Commission of Ohio.

Q. Now of course the account and report of Messrs. Kay & Tabler will come when the other part of this case is reached, the operating expense, etc., I assume; you haven't seen that report?

A. Yes, sir, I saw it for a few minutes.

Q. You haven't it now?

A. No, sir.

Q. Are the records still there that Messrs. Kay & Tabler saw?

A. They are.

Q. Has any one been there to see them since they were there on behalf of the City?

A. No, sir.

* * * * * * *

[fol. 223] And also—

EUGENE L. HEYSER, called for purposes of cross-examination, having been heretofore duly sworn, testified as follows:

Cross-examined by Mr. Landis:

Q. You have been sworn in this proceeding before, Mr. Heyser?

A. Yes, sir.

Q. Mr. Heyser, you said that you are the appraisal engineer for the United Gas Improvement Company?

A. Yes, sir.

Q. And have been for quite a few years?

A. Yes, sir.

Q. Do you own any stock in The United Gas Improvement Company?

A. No, sir.

Q. Are you an officer of that company in any capacity outside of engineer?

A. No, sir.

Q. Do you own any stock in any of the subsidiaries of The United Gas Improvement Company?

A. No, sir.

Q. Or any of the companies that they control?

A. No, sir.

* * * * * * *

[fol. 224] Q. What do you mean by assembling pipe; isn't it strung along the trench as it is delivered?

A. It is strung along the top of the trench but it may be on one side of the trench or it may be on the other side of the trench.

Q. What is the difference?

[fol. 225] A. There is a lot of difference because it has to be put in proper—strung properly along the top of the trench in order to lower it into its proper place.

Q. Do you join it before you lower it?

A. No, sir.

Q. What is the difference then if one is on that side and the other is on this side?

A. They may unload two length of pipe in one location in order to leave a driveway or a street crossing and they have to pick it up and carry it across or distribute it across the street.

Q. Then what do you mean by cleaning the pipe?

A. During the time that it is being handled it may pick up a lot of dirt and mud; if it is screw pipe it is in the threads, or it may get a lot of dirt into the inside of the pipe; they don't pick it up like a babq and lay it on a trench; they give it a sling and it may get four or five shovelfuls of dirt; so before you make a joint you have to see that the inside of the pipe is perfectly clear of all foreign matter and if there are any nicks in the end of the pipe, if it is welded, those have to be taken out so that you get a good, clean welded joint.

Q. Then you have to have somebody to lower it into the trench?

A. Yes, sir.

Q. And then you have to get somebody down there to level it up?

A. Well, some one of the labor gangs does that, yes.

Q. All the leveling that is necessary is that which is necessary to make a firm joint?

A. No, sir, it has to be laid in a perfect line.

Q. Like a water or sewer pipe?

A. Yes, sir.

[fol. 226] Q. In order to avoid resistance to the gas as it passes through?

A. No, sir, it has to be probably more carefully laid than a water or sewer line because manufactured gas carries through with it certain condensation or certain fluids that may become condensed; go out in the form of a vapor in the system, and then due to changes in temperature it becomes condensed and collected in the bottom of the line. Now then, if that line is not laid so that it will drain to a particular point without pockets or sacs in it—it must be perfectly level or in a perfect line so that that vapor having condensed can flow to a low point where it is collected in a drip and pumped out, because if you lay a line down grade and up again, without a drop, you will form a pocket which will stop the flow of gas. Now then if you are laying a line along a street line and are not careful to get it level you will get a pocket in there.

Q. Do you get that drip, that condensation from the vapor, in natural gas?

A. No.

Q. Just manufactured gas?

A. Yes, sir.

Q. Well, pretty near all this stuff was laid up there when they were using natural gas, so that does not apply does it?

A. Yes, sir, it does.

Q. Wasn't all this pipe line laid when they were using natural gas up there?

A. No, sir.

Q. The old distribution system I am talking about; do you mean they dug it up and relaid it?

A. There was a lot of it relaid but the fact remains that they are now serving the mixed gas, or a mixture of manu-

factured and natural gas; therefore this system had to be [fol. 227] laid just as level as a purely manufactured gas system.

* * * * * * *

[fol. 228] Redirect examination.

By Mr. Bentley:

Q. Mr. Heyser, you were in court here a year ago when this matter was continued?

A. Yes, sir.

Q. And following the suggestion of the chairman at that time as to the adjourning the cross-examination, I wish you would put in this record a statement of what was done by you with reference to conferences with Mr. Allensworth and furnishinf information, and what you arrived at.

A. Following the adjournment of the last hearing which, I think, was November 23rd, 1928, Mr. Allenswo-th, as engineer for the city and myself as engineer for the Utilities, arranged a series of engineering conferences for the purpose of supplying Mr. Allensworth with the details supporting the unit prices used by us in the valuation as set [fol. 229] up in Company's Exhibit No. 1. Those conferences were informal and made as brief as it was possible to do so and give Mr. Allensworth the information that he desired. In other words he asked for certain information and it was furnished to him willingly; but we eliminated a lot of questions that probably would not be relevant.

Q. Yes. Now, this is preliminary to some other questions I want to ask you, and I think it is fair that the record show. How many conferences did you have, how much time was consumed in them; how many times did you come out here?

A. Six.

Q. You live in Philadelphia?

A. Yes, sir.

Q. And how many days were you out here on each trip?

A. The first conference was held in Columbus on January 3rd and 4th; two days.

Q. '29?

A. 1929, yes, sir. The second conference was held in

Columbus on January 22nd and 23rd, 1929. The third engineering conference was held in Columbus on February 18th and 19th, 1929; all of these conferences held in Mr. Allensworth's office.

Q. Well, there were six conferences altogether?

A. Yes.

Q. The dates are not so important.

A. I was trying to get into the record this information; these conferences were adjourned in Columbus to continue in Lima.

Q. Yes, I was going to ask you. Were you at any of the conferences in Lima?

A. The fourth engineering conference was held on May 6th in Columbus. The fifth engineering conference was held at Lima on May 16th and 17th, 1929, and the sixth engineering conference was held in Columbus on August, 15th, 1929.

Q. At those conferences I understand you furnished to [fol. 230] Mr. Allensworth such information as he requested you to furnish, is that it?

A. Yes, sir.

Q. With reference to what, to what was the inquiry directed?

A. To material costs, labor rates, labor performances and all the miscellaneous items that go to make up the supporting data of the unit prices as used by the company's engineer in the preparation of company's Exhibit No. 1.

Q. And in those conferences isn't it a fact that you checked through the inventory which you had filed item by item and supplied that information as to such items as he requested?

A. Yes, sir.

Q. And have you a schedule of that information as you furnished it to him, or did you simply read it from your own sheets?

A. I read it from my sheets.

Q. And Mr. Allensworth, how did he do?

A. He took the information on forms prepared by him, tabular forms; and after the completion of our engineering conferences, Mr. Allensworth prepared an exhibit showing the results of our conferences.

Q. And is that the exhibit which is tendered to us this morning?

Mr. Landis: No.
The Witness: That contains the information.
Mr. Pringle: Yes, I gave it to him.

Q. Have you been furnished a typewritten or other copy of the data which Mr. Allensworth obtained from you?
A. Yes, sir.
Q. Have you that here?
A. That is a copy of it.
Q. This brown paper bound volume?
A. Yes. That is the information, or the exhibit.
[fol. 231] Q. Now, at those conferences was there any information asked of you by Mr. Allensworth that you did not give him?
A. No, sir.
Q. And what you gave him, state whether or not it was true and correct as you gave it to him?
A. Humanly correct, as far as I could—with full intent of being absolutely correct.
Q. That is what I mean. Were there any matters which are involved in Exhibit 1, the inventory and appraisal, that Mr. Allensworth did not ask about, as you recall it?
A. Yes, sir.
Q. And as to those, you did not, of course, furnish any information?
A. No, sir.
Q. What were they?
A. Land, buildings, manufacturing plants, equipment, large structures and so on at the manufacturing plant.
Q. Which were not asked about and you didn't give any information?
A. No, sir.
Q. In these conferences did you make any trips to Lima?
A. Yes, sir.
Q. How many with Mr. Allensworth or when he was there?
A. I think there were three.
Q. What was the purpose or object in having the conference in Lima instead of Columbus?
A. In order to check certain items of the inventory and inspect the manufacturing plant with Mr. Allensworth so that we could have a better understanding of the properties we were discussing.
Q. Were the inventories checked?

A. Spot check, yes. The distribution system including the distributing mains and services and meters, the trans-
[fol. 232] mission line from a point east of Kenton to Lima, were checked by one of Mr. Cahill's assistants, and one of my assistants from the company's records.

Q. You mean Mr. Allensworth's assistants and one of my assistants together spot checked certain groups of the inventory with the company's record, and made certain spot checks in the field, at which time Mr. Allensworth and myself were present.

—. We were in Lima during the entire period of that spot check and were in close touch with the work as it progressed.

Q. During those several conferences state whether or not there was any information or opportunity to require information that was not accorded Mr. Allensworth and his assistants?

A. Yes, sir.

Q. Was there any information withheld from them?

A. No, sir.

* * * * * * *

[fol. 233] And thereupon an inventory and appraisal of West Ohio Gas Company was marked for identification as Company Exhibit No. 7.

Q. Mr. Heyser, I hand you Company's Exhibit No. 7 and ask you to state what that is.

A. Company's Exhibit No. 7 is entitled "West Ohio Gas Company, Lima, Ohio, Lima District. Inventory and appraisal March 31, 1928, including details of reproduction cost."

Q. And what is the difference between that and Company's Exhibit No. 1 which was offered before?

A. This Exhibit No. 7 includes the revisions made necessary after we had checked the inven*o*try; also includes the revisions due to inclusions of property not belonging to the company and other revisions due to transposition of
[fol. 234] figures during the calculation of the valuations or appraisal as shown in company's Exhibit No. 1 filed in the first hearing in this case. It also includes the unit prices and the extension of those unit prices which go to make up the total for each item found.

Q. Which was not included in Exhibit No. 1?

A. Not included in Exhibit No. 1.

Q. And those are the unit prices which you furnished to Mr. Allensworth, part of them in these conferences?

A. Yes, sir; the detailed supporting data for these unit prices.

Q. They also include the unit prices that he did not inquire about as to certain items?

A. Yes, sir.

Q. If I understand you, Exhibit 7 is the final completed inventory and appraisal including the additions and corrections that were made following your conferences with Mr. Allensworth?

A. Yes, sir.

Q. And including the unit costs upon which that is based?

A. Yes, sir.

* * * * * * *

[fol. 235] And also—

R. L. Lynch, called on behalf of the appellant, West Ohio Gas Company, being duly sworn, testified as follows:

Examined by Mr. Bentley:

Q. Your name is——

A. R. L. Lynch.

Q. Where do you live, Mr. Lynch?

A. Lima.

Q. How long have you lived there?

A. 40 years.

Q. Are you connected with the West Ohio Gas Company?

A. Yes.

Q. In what capacity?

A. As superintendent of distribution and production in the Lima District.

Q. How long have you been connected with the company?

A. 29 years.

Q. How long have you been superintendent, as you are now?

A. 13 years.

Q. Are you familiar with all the details of the business?

A. I have been in a lot of them.

Q. Started in down around the bottom some place?

A. Away down.

Q. And your territory now is the superintendency of the system used by the city of Lima?

A. That is right.

Q. And, of course, as such have charges of the pipe lines?

A. Yes.

Q. And distribution mains?

A. Yes, sir.

* * * * * * *

[fol. 236] And also—

ERNEST R. CURTIN, called on behalf of West Ohio Gas Company, being duly sworn, testified as follows:

Examined by Mr. Bentley:

Q. You may state your name to the Commission.

A. Ernest R. Curtin.

Q. You live in Lima?

A. Yes, sir.

Q. What official position do you hold in connection with West Ohio Gas Company?

A. I am president of the company.

Q. Do you hold any other corporate official position in Lima in other corporations?

A. President of the Lima Telegraph and Telephone Company.

Q. And what other companies?

A. President of the Lima Trust Company.

Q. How long have you lived in Lima?

A. 37 or eight years.

Q. What has been your business during the past 37 or eight years?

A. Well, I was born and brought up in the oil and gas business; and have been interested in the Lima Gas Company for some 35 years in one way or another; as owner at one time.

Q. Not the owner now?

A. No, sir.

Q. In the gas business; state to the Commission what your actual experience in that business has been?

A. Well, I have done everything in the business from laying pipe to the management of the company.

Q. You are familiar with the production, transportation and distribution of natural gas, are you not?

A. Yes, sir.

Q. And artificial gas?

A. Yes, sir.

[fol. 237] Q. Are you familiar with pipe lines and construction of them and so forth and their use and operation?

A. Yes, sir.

Q. Are you acquainted with the physical property of the West Ohio Gas Company in Lima, Ohio?

A. Yes, sir.

Q. The transmission line?

A. Yes, sir.

Q. You take an active part in the management and control of that property, do you not?

A. Yes, sir.

Q. You may state to the Commission what the physical condition of that distribution plant in the city of Lima is?

A. I claim it is 100 per cent efficient.

Q. The working condition is 100 per cent?

A. Yes, sir; and if it wasn't we would make it so.

Q. And its physical condition is what?

A. 100 per cent.

Q. What is the character of service that the West Ohio Gas Company gives in Lima as to being satisfactory to its customers or otherwise, outside of the price?

Mr. Landis: I object.

Mr. Bentley: It has a bearing.

Commissioner Klinger: He may answer. Note an exception.

The Witness: The best that could possibly be given by any company.

Q. You may state, Mr. Curtin, whether the property is or is not being kept up to the highest standard all the time?

A. Yes, sir.

Q. Tell the Commission whether in your judgment and opinion it would be possible to expend economically and sensibly as much as $200,000 to make that property better than it is now in the city of Lima?

Mr. Landis: We object.

[fol. 238] Commissioner Klinger: Overruled.

Mr. Landis: Exception.

The Witness: I am satisfied that we couldn't possibly do it, because if we felt——

Mr. Landis: I object.

The Witness: I want to tell them why.

Q. Why could you not do it?

A. Because if we felt that any part of the property needed money to put it into 100 per cent we would spend the money.

Q. Is that true also of the transmission line?

A. Absolutely.

* * * * * * *

[fol. 239] And thereupon the Appellant, West Ohio Gas Company, rested.

[fol. 240] And also—

HARRY R. ALLENSWORTH, called on behalf of the Appellee, the City of Lima, Ohio, being first duly sworn, testified as follows:

Examined by Mr. Landis.

Q. Your name is H. R. Allensworth?

A. Yes, sir.

Q. You live in the City of Columbus, Ohio?

A. Yes, sir.

Q. What is your business, Mr. Allensworth?

A. Consulting Engineer.

Q. You may tell us some of the experience and qualifications you have in that business as consulting engineer?

A. I have a technical education in mechanical and electrical engineering. I am a member of the American Institute of Electrical Engineers, the Western Socity of Engineers. I am a registered professional engineer.

For the past twenty-seven years, since 1902, in fact, I have been in responsible charge of engineering work of some character or other. For the past fifteen years, since 1914, in fact, I have specialized in Public Utility economics, devoting most of my time to public utility appraisals and

rate proceedings. I have had experience in public utility finance, accounting, management and operating problems.

In 1914, and for some years subsequent thereto, I was valuation engineer for the Ohio State Telephone Company, having full charge and responsibility for all valuations made by and for that company.

While employed by the Ohio State Telephone Company, I was called to the property of the Columbus Railway [fol. 241] Power & Light Company and divided my time between those two properties; and for the Columbus Railway Power & Light Company, I was consultant on valuation work and a specialist on economic studies, on studies having to do with the relation between engineering and management and finance.

While engaged upon these two pieces of work, I was called to the State of Minnesota where I was placed in charge of valuation of telephone property in the State of Minnesota for the Tri-State Telephone & Telegraph Company. In this work, I had full charge of and responsibility for the appraisal of all of the telephone property of that company in the State of Minnesota, the northwestern part of Wisconsin, the eastern part of North Dakota, and the eastern part of South Dakota. While this work was in progress, I was also placed in full charge of and responsibility for the valuation of these properties for purchase and sale between the independent telephone interests and the Bell Telephone interests.

Also while engaged in this work as recounted for the past fifteen years, I was called in on other matters as consulting engineer.

Incidentally, while employed as stated, I served the State Civil Service Commission of Ohio as expert examiner, conducting examinations to determine the fitness of applicants for positions requiring technical training. I also served the City of Cincinnati as expert examiner for its Civil Service Commission.

In 1916, I was examined by the State Civil Service Commission of Ohio for the position of Chief Engineer of the Public Utilities Commission of Ohio. I passed that ex- [fol. 242] amination and was certified for appointment to that position.

In addition to Public Utilities work as recited, I have made appraisals of industrial enterprises. During the years

1924, '25, '26 and '27, I served the City Council of Columbus, Ohio, as consulting engineer in the matter of fixing rates to be charged for natural gas in the City of Columbus.

In 1927, I was retained by the Attorney General of the State of Ohio as consulting engineer on the Ohio Bell Telephone Company in the state wide rate case and am still serving under the present Attorney-General in that capacity.

In 1928, I appeared before this Commission as a witness in behalf of protesting municipalities in the Logan Gas Case.

In July of this year, I appeared before the City Council of Cincinnati in behalf of the communities of Sayler Park, Fern Bank and others in the matter of extending the street car service along what is locally known as the Lower River Road to Fern Bank.

I just recently prepared for the Columbus, Ohio, City Council a report on the Columbus Railway Power & Light Company, both the Electric Light & Power and Street Railway Divisions of that Company.

Q. Now, Mr. Allensworth, you have been present at the hearings before this Commission and have heard the testimony of the witnesses testifying as to the valuation matters on behalf of West Ohio Gas Company?

A. I have, yes, sir.

Q. You have heard all the testimony of the company's witness, E. L. Hyser, have you?

A. I did, yes, sir.

Q. And have you had in your possession a copy of company's Exhibit Number 1?

A. I have had, yes, sir.

[fol. 243] Q. At the hearing before this Commission on November 20th to 22nd, 1928, the Commission requested the Company's witness, Mr. Heyser to supply you with complete details of unit costs from which the reproduction cost revealed in Company's Number 1 was erected. Has this detail been furnished to you?

A. It has.

. . . . . .

[fol. 244] Q. Will you please explain this Exhibit Number 2 to the Commission?

A. What has been marked City's Exhibit Number 2 is a

[fol. 245] statement of my reproduction cost appraisal of the properties of the West Ohio Gas Company as of March 31, 1928, used and useful in the distribution of gas within the corporate limits of the City of Lima. This reproduction cost appraisal of that part of the company transmission system chargeable to Lima is based upon inventory quantities as contained in company's Exhibit Number 1. The company's method of allocating the proper portion of the transmission system used and useful in supplying gas to Lima consumers is used. The inventory quantities of distribution system property in this reproduction cost appraisal are limited to the distribution property used and useful in supplying gas to consumers within the corporate limits of the City of Lima, whereas the inventory quantities upon which the company's reproduction cost is erected includes distribution property used in the distribution of gas to consumers beyond the Lima City Limits. The Company's inventory of distribution mains is found to be in error to the extent of 3232 feet of four inch main. This amount of main was omitted in the company's inventory and is included in the inventory upon which my reproduction cost appraisal is erected. With exceptions as noted, the company's inventory is bound to be reasonably correct and is accepted.

Q. That is as to quantities of material?

A. As to quantities of material.

• • • • • • •

[fol. 246] It will be noted that construction overhead charges are included in the amount of $224,697.84. This amount is the amount necessary to provide engineering and superintendence and interest during construction, organization and legal expense and omissions and contingencies on all construction. The overhead charges applied to land are interest during construction and taxes. Total overhead charges on land is 4.44 per cent.

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[fol. 247] Mr. Landis: I offer in evidence City's Exhibit Number 5.

Commissioner Klinger: It may be admitted.

And thereupon the exhibit above offered was admitted in

evidence on behalf of the City of Lima and is herewith submitted marked City's Exhibit Number 5.

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[fol. 248] Monday Morning Session

March 31, 1930.

And thereupon the further hearing of this cause was resumed pursuant to adjournment, before Honorable —— Geiger, Chairman, William Klinger and John W. Bricker, Public Utilities Commissioners.

Present: Mr. H. O. Bentley, Lima, Ohio, and Mr. E. W. Hebel, Chicago, Illinois, on behalf of the West Ohio Gas Company. Mr. Melvin C. Light, City Solicitor, Lima, Ohio, and Mr. Elmer Welty, Asst. City Solicitor, Lima, Ohio, on behalf of the City of Lima, Ohio.

Commissioner Bricker: Shall we proceed with the appeal of the West Ohio Gas Company from the gas rate ordinance of the City of Lima, Ohio? Let us have the appearances.

Mr. Bentley: I might say, if the Commission please, a lot of things have happened since this case was continued last, and Mr. Hebel of Chicago takes the place of Mr. Goeke on our side.

Commissioner Klinger: How do you spell that name?

Mr. Bentley: H-e-b-e-l, of the firm of Cook, Sullivan & Hebel, who have been counsel in this case throughout.

Commissioner Bricker: What are the initials?

[fol. 249] Mr. Hebel: E. W.

Mr. Bentley: I might also say that the management on the other side of the table has shifted. Mr. Light now appears as City Solicitor and Mr. Welty as Assistant City Solicitor.

Mr. Bricker: Mr. Welty, what is the first name?

Mr. Welty: D. E.

Commissioner Bricker: D. E. Welty?

Mr. Welty: Yes.

Commissioner Klinger: I believe this meeting is for the purpose of cross-examining the City's accountant?

Mr. Bentley: That was where we suspended when the direct examination was concluded.

Mr. Light: I might ask one or two questions.

And also—

HARRY R. ALLENSWORTH, resuming the stand, continued his testimony as follows:

Examined by Mr. Light:

* * * * * * *

[fol. 250] Cross-examination.

By Mr. Hebel:

* * * * * * *

[fol. 251] Q. You testified in this case about six or seven months ago, wasn't it, on the hearing before?

A. I testified in this case at the last hearing. I don't remember the date.

Q. But it was early last fall sometime?

A. As I remember it, yes.

[fol. 252] Q. And how long had you been associated in this case prior to that time?

A. Since December of 1927.

Q. Well, that is practically from the time the case started, is it not?

A. I suspect it was before the case started.

Q. You were employed by the City of Lima prior to the time this matter came before the Commission?

A. Yes, sir.

Q. Who employed you for the City?

A. The—I was employed by the City of Lima. My contact with the City of Lima was entirely through the City Attorney, Mr. Paul T. Landis at that time.

Q. And all the conferences you had relative to this matter were had with him, were they?

A. So far as I remember. There was one or perhaps more meetings with the City Commission.

Q. But when you were first approached on this matter it was by Mr. Landis?

A. It was.

Q. And he came down here to see you?

A. He did.

Q. Did he tell you that the City was about to pass a new rate ordinance?

A. He did not at that time.

Q. Did he tell you the purpose for which he wished to employ you?

A. Certainly.

Q. What was that purpose?

A. To investigate the gas rate situation as it then existed in the City of Lima.

Q. And that was in December, 1927?

A. As I remember it, yes, sir.

Q. And what did you do for the City of Lima immediately thereafter?

A. I went to Lima and met the City Commission.

[fol. 253] Q. Is that all you did at that time?

A. Yes, sir.

Q. Then what was the next time when you did anything in connection with this matter?

A. I can't answer that question because my work for the City of Lima from that time forward was entirely conferences with Mr. Landis.

Q. Were those held down here?

A. In some instances. In some instances they were held in Lima.

Q. How many such conferences did you have?

A. I don't know.

Q. Over what period of time?

A. I don't know how many conferences there were and I don't know what the period of time was without going back on my ledgers.

Q. Do you know when this case first started before this Commission?

A. Generally, yes.

Q. Wasn't the first hearing in July, 1928?

A. I suspect that date may be correct.

Q. How many conferences did you have with the City of Lima officials or with Mr. Landis prior to that time?

A. I don't know.

Q. Approximately how many?

A. I couldn't say approximately. That would be from December of 1927 until July, 1928. And at this late date I couldn't say.

Q. Well, did you average as many as one a month?
A. No, sir.
Q. Did you average as many as one every two months?
A. I don't know.
Q. Did you do anything at any of those conferences except discuss the situation?
A. I did not.
Q. Did you make any investigation prior to July, 1928, [fol. 254] as to the value of the property used by the West Ohio Gas Company?
A. Well, you will have to explain, Mr. Attorney, what you mean by the word "value" when you ask that question.
Q. I am trying to find out what you did prior to July, 1928, in reference to the valuation of the property of the West Ohio Gas Company, if anything.
A. Now, if you are asking me the question as to what work I did as an engineer in the making up of an appraisal of this property prior to July, 1928, I did not do any work of that nature.
Q. Well, what did you do prior to July, 1928?
A. I had—I was in conference with Mr. Landis from time to time.
Q. Well, what did you confer about?
A. Gas rates in Lima.
Q. Well, what did you discuss in reference to gas rates?

Mr. Light: We are going to object to that question.
Commissioner Klinger: Objection is sustained.

Q. How many times were you in Lima prior to July, 1928?

Mr. Light: Objection.

Q. In reference to this case?

Mr. Light: Objection.
Commissioner Klinger: What purpose may this serve?
Mr. Hebel: Your Honor please, I am trying to find out just how familiar this witness is, just what he did in reference to the question of the valuation of this property and the rates.
Commissioner Klinger: Ask him that. There will be no objection to that. Objection to the question will be sustained.

Q. Will you tell me prior to July, 1928, just what you did in reference to this case, this rate question, if anything?

A. Prior to July, 1928, I was in conference with Mr. [fol. 255] Landis, the then City Attorney of Lima, in the matter of the Lima gas rate. I had one or more conferences with the City Commission on the same subject. I had one or more conferences with other city officials in Lima on the same subject. I made some inquiry as to the then status of the business of the West Ohio Gas Company.

Q. What do you mean by the then status of the business of the company?

A. I mean just exactly what that word would imply, Mr. Counsel. I made an inquiry as to the then status of the business of the West Ohio Gas Company. The West Ohio Gas Company, as you perhaps know, is engaged in the business of distributing both manufactured and natural gas in the City of Lima and I made some extended investigation as to that business.

Q. Of what did that extended investigation consist?

A. It consisted of a review and examination of earnings and expense accounts, audits that had been made of the company, inquiry into the book accounts of the company itself.

Q. Did you discuss with any people in the City of Lima the character of the West Ohio's service, whether it was satisfactory or not?

A. I don't know whether I did or not.

Q. Did you investigate the property during that time as to its condition and the efficiency with which it was operated?

A. What do you mean by investigation, did I go out and look at the property?

Q. Yes.

A. No, I did not at that time.

Q. Did you make any inquiries or did anyone complain to you about the character of the service that was being furnished by this company?

[fol. 256] A. There was no complaints made to me as to the character of service and I don't see how there could have been under the circumstances. I am not and have not been a city official of the City of Lima.

Q. So far as you know, the service is satisfactory to the people of that community?

A. So far as I know I don't know that it was.
Q. You don't know that it was?
A. No, sir.
Q. You are familiar with other gas properties, are you?
A. To some extent.
Q. And since July, 1928, you have investigated and examined the property of that company?
A. I have.
Q. And its records, have you not?
A. I have.
Q. How did the operating conditions of that company compare with the other gas companies with which you are familiar?

Mr. Light: Objection.
Commissioner Klinger: Let him answer.
The Witness: Just what do you mean by operating conditions?

Q. Well, I mean the condition of the plant and its ability to serve the public, function for the purpose for which the plant was created.
A. The condition of the plant and its ability to serve the public was that of an operating gas property. It was engaged in the business of distributing gas in the City of Lima to numerous consumers.

Commissioner Klinger: He wants to know how did it compare with other communities around over the state.

Q. With which you are familiar.
A. How does it compare with what particular community?
Q. Well, the ones that you are familiar with.
A. Well, I am familiar with a lot of them and there is [fol. 257] no direct comparison between the conditions at Lima and any other city that I know of.
Q. From your observation of this property is it your opinion that this property is being efficiently managed?
A. I don't think so.
Q. Is that by a comparison with other gas properties?
A. It is not.
Q. What is the basis for that opinion?

A. Basis of that opinion is my study of the property and my judgment as an engineer.

Q. But not by comparison with other properties?

A. No, sir. I don't know of any other property that could be directly compared with it.

Q. What other gas properties in Ohio or in this section of the country are you familiar with?

A. The properties of the Columbia Gas and Electric Company, particularly Columbus Gas & Fuel Company, the Federal Gas & Fuel Company.

Q. Those all located here in Columbus?

A. Those two are.

Q. What other gas companies?

A. To some extent, other gas companies, the Standard Oil Company, the West Ohio Gas Company, the Hope Natural Gas Company of West Virginia, the United Fuel Gas Company of West Virginia.

Q. What is the extent of your familiarity with the operations of those companies?

A. In the case of the United Fuel Gas Company I am familiar with their operations. In the case of the Hope Natural Gas Company I am now conducting some investigation of that.

Q. Are those producing gas companies or are they dis-
[fol. 258] tributing companies?

A. They are both.

Q. You mean each one does both?

A. Yes, sir.

Q. Or some of them do one and some another?

A. Each one of them does both.

Q. How large——

A. As I remember. How?

Q. How large are those companies, about what is the investment in the property?

A. The Hope Natural Gas Company claims an investment of seventy-four millions, claims to be the biggest gas producing company in the country, that is in the Appalachian district. The United Fuel Gas Company is the next largest company.

Q. Do they operate in any cities approximately the size of Lima?

A. I can't answer that off-hand.

Q. Do you know the cities in which they operate?

A. I can't tell you off-hand.

Q. Do you know any cities in which they operate?

A. Well, they are West Virginia cities and I wouldn't attempt to repeat the names of those cities without having the record before me.

Q. Do you know how many communities they are in which they operate?

A. Not from my memory; no, sir.

Q. Do you know approximately how many?

A. No, sir.

Q. You are a registered professional engineer, are you, Mr. Allensworth?

A. Yes, sir.

Q. Do you have a certificate entitling you to practice in this state?

A. No, sir. There is no such certificate required in this state.

Q. Is there any examination required in this state for practicing as an engineer?

A. No, sir, not as a consulting engineer; no, sir.

[fol. 259] Q. How long have you been an engineer?

A. For about thirty years.

Q. Were were you raised in this state?

A. I was raised in this city.

Q. And has all your engineering experience been in this state?

A. It has not.

Q. You commenced engineering work then about 1900, is that right?

A. Yes, before that I should say.

Q. From what university are you a graduate?

A. I am not a college graduate.

Q. Where did you study engineering?

A. I studied engineering originally under my father who was a mechanical engineer. I got much of my technical training from my father. My technical training in engineering from that source was supplemented by private study with special tutors in various subjects.

Q. That is the extent of your training except the experience that you have had in actual practice, is it?

A. How is that?

Q. I say what you have outlined is the extent of your training except the experience you have gained in actual practice?

A. What do you mean by training?

Q. I mean the preparation that you had for engineering work.

A. Oh, dear me, no.

Q. Well, what additional preparation did you have?

A. Well, I have been a constant student of the technical aspects of engineering all my life.

Q. Yes. And, of course, you have learned very much [fol. 260] about this subject through your actual experience as an engineer since you started that way?

A. Certainly.

Q. You have no engineering degrees, then, from any school whatsoever?

A. I have not.

Q. Have you been employed by or worked for a gas company?

A. No, sir.

Q. In no capacity whatsoever?

A. None whatever.

Q. You never designed a gas plant?

A. No, sir.

Q. Or a distribution system?

A. No, sir.

Q. Or transmission system?

A. You are talking about gas plants?

Q. Gas plants.

A. No, sir, I have not.

Q. Did you ever estimate the cost complete of building a gas plant and transmission system?

A. Yes, sir.

Q. Except in connection with valuation cases?

A. No, sir.

Q. How many valuation cases involving gas properties have you been connected with?

A. Well, if you will pardon me, Mr. Attorney, I just don't like to reveal in open hearing here a complete list of all my clients.

Q. I am asking you how many now.

A. But I can perhaps answer it this way that the gas properties that I have appraised or have in process of appraisal——

Q. I am asking you about the gas properties that you have appraised.

A. Well, I will——

Q. How many are there?

A. The Columbus Gas & Fuel Company, the Federal Gas & Fuel Company, the West Ohio Gas Company as to complete appraisals. Other gas companies in which I participated more or less in valuation. For example, the Logan [fol. 261] Gas Company.

Q. But those three companies are the three companies in which you made complete appraisals?

A. That have gone completely through the final hearing, yes.

Q. In all three of those cases did you make the appraisals yourself?

A. Yes, sir.

Q. Now, when did you make an appraisal in the Columbus Gas & Fuel property?

A. That was started in 1924.

Q. About what was the value of those properties?

A. As I remember it, around about four to five million.

Q. The Federal Gas Company you say was another one?

A. Yes, sir.

Q. Where did that company operate?

A. Columbus, Ohio.

Q. When did you appraise those properties?

A. That appraisal was started along about 1924.

Q. So that these two appraisals, the Columbus Company and the Federal Company, were made about the same time?

A. They were.

Q. Who were you representing, the companies, in connection with those appraisals?

A. I was representing the City of Columbus.

Q. And about what is the value of the property of the Federal Company?

A. I don't remember but it seems—it seems to me something around about a million or more or less.

Q. Both those companies handle both natural and artificial gas?

A. They do not.

Q. Which do they handle?

A. Natural gas.

Q. Now, in addition to gas company appraisals what other utility property have you appraised? What other [fol. 262] types of properties?

A. I think all classes of public utility property with the exception of water works and steam railroads.

Q. You have appraised electrical properties, have you?

A. I have.

Q. How many of those have you appraised?

A. I don't remember off-hand and I will say for your information that on electric properties, that is electric light and power properties I never made a complete appriasal of any one property.

Q. You mean that you assisted in the appraisal of some property?

A. No, I do not. I mean that I was in charge of some phase of valuation in those kind- of properties.

Q. Well, what phase?

A. Well, in one particular case I was consultant with a utility on unit prices. Another case I made an inventory and valuation for financing purposes that went only to the management of the company.

Q. And not for the question of valuation?

A. How?

Q. And not for the question of valuation?

A. It was valuation but not valuation for rate making.

Q. And in addition to electrical properties what other properties have you been connected with for valuation purposes?

A. Interurban traction line, telephone properties.

Q. You have had quite an extensive experience in telephone properties, haven't you?

A. I have.

Q. Has that all been in this state?

A. It has not.

Q. In what other states?

A. State of Minnesota, North Dakota, South Dakota, Wisconsin.

Q. During the entire time you have been practicing as an eigineer have you been located in Ohio? Has that been your headquarters?

A. I have never changed my residence from Ohio but I [fol. 263] have spent considerable time in Minnesota.

Q. Now, this question of making a valuation, Mr. Allensworth, involves a matter of experience, doesn't it?

A. I think so.

Q. Knowledge of actual operating conditions, actual construction conditions?

A. No, I don't understand how you can confuse operating conditions with valuation.

Q. Well, then, it involves a knowledge from experience of construction problems, doesn't it?

A. Construction processes, construction——

Q. Construction costs?

A. Yes, sir.

Q. In other words, what you do when you make a valuation, one takes his information of actual construction costs and experience of construction cost and then exercises his judgment in determining what the reasonable cost should be; isn't that about it?

A. Who does?

Q. The valuation engineer.

A. What valuation engineer are you referring to? If you are asking me if I do that, no, I do not.

Q. Well, what do you do?

A. I make up the valuation and establish costs based upon my knowledge and experience.

Q. Well, that knowledge and experience is based upon your actual knowledge of what it costs actual constructors to do similar work, isn't it?

A. My knowledge and experience is my knowledge of construction costs and operations.

Q. Well, isn't that based on the actual experience of constructors?

A. It is based upon my actual experience largely; based to some extent on my observation of the experience of others.

[fol. 264] Q. Well, but you say you have never constructed a gas plant; isn't that correct?

A. Yes.

Q. And you have never constructed a transmission line; is that correct?

A. Gas transmission, that is right, yes, sir.

Q. And so that the costs of constructing such a line, if you have any knowledge on those must come from the contractors, must it not?

A. It does not.

Q. Do you disregard the contractors costs as based upon actual experience by standard construction companies?

A. No, sir.

Q. How much weight do you give to that factor?

A. I don't know.

Q. Aside from knowledge of actual construction costs, what factors do you have on which to base your opnion as to what it costs to construct a gas plant or gas transmission main?

A. I have actually performed just such work myself. Now, if you will pardon me for the explanation, it doesn't make any difference if you are digging a trench of certain dimensions whether you are going to put a gas pipe in it or whether you are going to put a conduit in it. That is an excavation job. I have done a lot of it.

Q. Yes. But if you are going to lay a gas main, the experience of contractors in actually laying that main is an important factor in determining what the cost will be, is it not?

A. I don't know whether it is or not. I would have to know who the contractor is.

Q. Well, you take standard contractors of various companies that are constantly engaged in that business.

A. I don't understand the term, if you please, standard [fol. 265] contractor. What is a standard contractor?

Q. I mean a contractor of reputation, repute, that has been engaged in that business for enough time that he has had general experience; don't you think that his actual costs are a matter of a good deal of weight in connection with determining the cost to reproduce a plant?

A. No, I would not until I know what the costs are and the circumstances under which the costs were incurred.

Q. Exactly. In other words, in addition to his cost you must also know the locality in which he is working and the conditions under which he is working?

A. Surely.

Q. But, given those factors, the question of what it costs to reproduce the plant is very largely influenced by actual construction conditions, is it not?

A. Well, if one is thoroughly familiar with the actual conditions under which the construction was conducted.

Q. If you are not familiar with that, upon what can you base an opinion as to the cost of constructing a property?

A. I base my opinion upon my experience and my knowledge as an engineer. My appraisal, if you please, of the Lima Gas property is an expression of my opinion as an engineer as to the reproduction cost of that property.

Q. Yes, but on what is your opinion based?

A. It is based on my knowledge and my experience.

Q. Your knowledge and experience in constructing gas manufacturing plants?

A. My knowledge and experience of engineering construction of all kinds.

Q. Including gas manufacturing——

A. Including gas manufacturing plant and all other [fol. 266] mechanical——

Q. Well, what gas manufacturing plants have you ever constructed?

A. I haven't constructed any.

Q. And what construction companies are you familiar with and know their cost figures that have constructed gas manufacturing plants?

A. United Gas Improvement Company.

Q. What plants that they have constructed are you familiar with?

A. Lima gas property.

Q. Is that the only one?

A. Yes, sir.

Q. And where did you get the information as to the cost on that property?

A. Mr. Heyser, their engineer.

Q. And you got in connection with this case?

A. Yes, sir.

Q. Now, are there any other plants which you have ever had experience as far as the manufacturing end of the business is concerned?

A. Manufacturing end of what business?

Q. Gas business, construction of gas manufacturing plants.

A. Read the question, will you please, Mr. Reporter?

(Previous question read.)

A. Not as gas manufacturing plants; no, sir; there are no other.

* * * * * * *

[fol. 267] Q. What construction overhead charges did you allow?

* * * * * * *

[fol. 268] And also—

HARRY R. ALLENSWORTH, resuming the stand, continued his testimony as follows:

Cross-examined by Mr. Hebel:

Q. I believe, Mr. Allensworth, we were discussing the City's Exhibit 2 which was prepared by you. You have those exhibits with you this afternoon?

A. I have.

Q. Will you get out Exhibit 2?

A. May I ask whether or not there was a question and answer pending when we recessed at noon?

(Question read as follows: What construction overhead charges did you allow?)

A. I allowed a total of 12½ per cent. of the reproduction cost as construction overheads on all classes of property with the exception of land. The overhead charge that I applied to land was 4.44 per cent.

[fol. 269] Q. And on everything else 12½ per cent?

A. Yes, sir.

Q. That included both materials and labor when you say construction overhead costs?

A. Yes, sir. When you say "everything else" I understand you to mean all of the other physical property. I, of course, did not apply that ratio to working capital, for example.

Q. No, I understand. It is the total physical property to which you applied that ratio?

A. Yes, sir.

* * * * * * *

[fol. 270] Q. Now, in making your analysis of the Company's value you took the construction overhead charges out from their position in reference to specific items and grouped them as a unit in a heading by itself; in other words, you put all construction overheads in at a total price?

A. Yes, sir.

Q. Which for the Company's figure which you show as $345,580.49 was the total of all the various overhead charges which they showed for different specific items of property?

A. Yes, sir.

Q. Did you figure up what percentage of overhead was allowed by the Company for each class of property?

A. No, that information was supplied to me by Mr. Heyser.

Q. And what percentage did he give you for each class of property?

A. Well, of course, I can't remember at this late date. There were varying percentages, as I remember.

Q. Didn't you take those figures down?

A. Yes.

Q. Do you remember what was the highest percentage that he used?

A. No, I don't. I may be able to find that.

Q. Do you remember what the lowest percentage he used was?

A. No.

Q. You took a flat percentage of 12½ per cent on the entire [fol. 271] cost of the property exclusive of land?

A. Physical property, yes?

Q. The physical property?

A. Yes, sir.

Q. And on land you took 4.4 you said?

A. Yes, sir.

* * * * * * *

[fol. 272] Q. Well, now, of this 12½ per cent. for overhead you have allowed we have got 3 per cent for taxes. What is your next item that goes to make up this 12½ per cent?

A. I included in my appraisal a total of 12½ per cent. on the reproduction cost of the physical property other than land for the item, "Construction Overhead Charges". That 12½ per cent is an expression of my opinion as an engineer as to the total amount that should be added to my [fol. 273] reproduction cost appraisal for these overhead charges and totals $224,697.84. The 12½ per cent for purely comparative purposes may be divided into Engineering and Superintendence, 5 per cent; Interest During Construction, 3 per cent; Organization and Legal, 1 per cent; Omissions and Contingencies, 3½ per cent; and in submitting those factors for comparison purposes only I do not wish to be understood as to saying that it is my contention that the engineering and superintendence would be exactly 5 per

cent of the reproduction cost. It may be 5 per cent. more or less.

Q. Yes.

A. The same is true of interest during construction, organization and legal, omission and contingencies. In my opinion as an engineer, the amount that I have——

Q. Pardon me but are you reading this statement?

A. I am not reading this statement. And as I was saying before being interrupted, I have included in my reproduction cost a total of $224,697.84 for construction overhead charges, which I believe to be ample.

Q. If the engineering and supervision expenses went above 5 per cent., then should your 12½ per cent. be increased?

A. No, sir.

[fol. 274] And also—

EDWARD E. SMITH, called on behalf of the City of Lima, being first duly sworn, testified as follows:

Examined by Mr. Light:

Q. State your name and address to the Commission.

A. My name is Edward E. Smith, Second, and I live at Lima, Ohio.

Q. What is your profession?

A. I am superintendent of the filtration for the waterworks of the City.

Q. What is your profession?

A. Well, profession is rather peculiar. I am a chemist, bacteriologist, biologist, sanitary engineer.

Q. How long have you been engaged in that profession?

A. Since 1913.

Q. How long have you been in Lima?

A. Since 1918.

Q. You are employed by the City in connection with its waterworks?

A. By the City Waterworks, yes, sir.

Q. As a chemist?

A. As superintendent of filtration.

Q. As a chemist or in your profession do you understand the proper procedure to analyze and learn the B. t. u.'s in gas?

A. Yes, sir.

Q. Have you done that with the Lima gas?

A. I have examined the gas at the filtration plant for the thermal units.

Q. And that is the gas that comes from the gas company?

A. The gas that we use there in the plant.

Mr. Hebel: Pardon me, what plant did you say?

The Witness: It is the filtration plant of the waterworks.

[fol. 275] Q. And to what extent did you examine the B. t. u.'s of that gas and over what period of time?

A. It was started in 1922, March, 1922, and concluded, the last examination made was in May, 1929. Not consecutively.

Q. Give us the result of your tests during the year 1928, do you have that in some tabulated form there?

A. Yes, sir, I have it as monthly averages, also as daily figures.

Mr. Bentley: Pardon me, I didn't get that question.

(Question and answer read.)

Commissioner Klinger: You have no copy of those?

The Witness: These are my own copy of the letters that I sent, one addressed to the city manager and four to Mr. Paul Landis, former City Solicitor.

Q. There is only available then one entire set. I have a couple sheets.

A. You have one and I have the other.

Mr. Bentley: I would like to ask a question, if the Commission please, for my information. Of course we consented to put the witness on out of order as a matter of courtesy. I am wondering what this has to do with valuation?

Mr. Light: The testimony offered by the Company through its witness was that this company was furnishing good efficient service, 550 B. t. u.'s. That was offered by you and it is simply meeting that testimony.

Mr. Bentley: I think it is conceded throughout this case that we have been furnishing good service.

Mr. Light: It hasn't been admitted yet.

Mr. Bentley: Mr. Landis has frequently, I think——

Mr. Light: The record doesn't show it. I propose to show you are not furnishing 550 B. t. u.

[fol. 276] Mr. Bentley: I still don't see what that has to do with it.

Mr. Light: Because you said you had a plant there that was furnishing 550 B. t. u. and I am going to show it does not.

Chairman Geiger: You claim that it is in contradiction to the testimony they have already offered?

Mr. Light, Yes, Your Honor.

Chairman Geiger: Well, without searching the record, just let it go in.

And thereupon the paper writings above referred to were marked for the purpose of identification as City's Exhibits 9-a, 9-b, 9-c, 9-d and 9-e, respectively.

Q. Mr. Smith, tell the Commission whether or not you prepared City's Exhibits 9-a, -b, -c, -d and -e.

A. Yes, sir.

Q. Tell the Commission whether or not that contains the tabulation of your analysis or the result of your examination of the gas of the West Ohio Gas Company at Lima, Ohio, as of the dates set forth in the exhibit.

A. Yes, sir.

Q. What could you say to the Commission as to that being correct?

A. I consider those adequate results.

Q. What do you mean by that?

A. I mean that the examinations as shown in the report, estimations of the heating value of gas as used at our purification plant, are sufficiently precise to be comparable to any other results of the same type.

Commissioner Klinger: Is that a laboratory test?

The Witness: Yes, sir, it is a calorimetric test.

[fol. 277] Chairman Geiger: You needn't examine your own witness. They will cross-examine him. What does it show?

Mr. Light: It averages about 475.

Chairman Geiger: Let the witness answer. What does it average?

The Witness: The annual average for the part of '28 and '29 practically daily tests was 476 British thermal units per cubic foot.

Chairman Geiger: That was during the time mixed gas was being used?

The Witness: I don't know. Those are the results that I obtained is all. I don't know anything about the type of the gas.

Chairman Geiger: You don't know whether it is natural gas or artificial gas?

The Witness: I didn't determine the chemical character of the gas, nothing but the heating value.

Chairman Geiger: Well, natural gas usually has a fixed British thermal unit, doesn't it?

The Witness: It will vary somewhat.

Chairman Geiger: Well, is it higher or lower than your average?

The Witness: It is much higher than those figures.

Chairman Geiger: What is it, about 1100?

The Witness: Well, you see my figures cover a period of service of natural gas and they will run there above a thousand in the year 1922.

Chairman Geiger: All right. What does 1928 run?

The Witness: 1928 and '29 runs 476 for an annual average [fol. 278] with very slight variations.

Commissioner Bricker: What is the average of the British thermal unit of the artificial gas generally?

The Witness: Well, I have a tabulation here of the data on various gases, and quoting this, theoretical water gas has a net B. t. u.'s of 298.

Commissioner Bricker: And the mixed gas will run about what?

The Witness: Well, depends, of course, on the proportion of the mix. What we find at Lima is 476.

Commissioner Bricker: Do you know anything about the character of mixed gas that is furnished in any other cities outside of Lima?

The Witness: No, sir, I made no investigation.

Commissioner Bricker: You don't know what the usual mixture is then?

The Witness: No, sir.

Chairman Geiger: Well, does the ordinance in here provide for a British thermal unit?

The Witness: There is no ordinance in Lima so far as I know.

Commissioner Bricker: Doesn't the rate ordinance in question say anything in regard to the character of gas furnished?

Mr. Light: It does not, Your Honor.

Chairman Geiger: Let me ask just one question. As I understand, the B. t. u. is the unit of heat?

The Witness: Yes, sir.

Chairman Geiger: And the efficiency of the gas, the ele-
[fol. 279] ments depends upon the number of B. t. u.'s in the gas?

The Witness: Yes, sir.

Chairman Geiger: And that ordinarily natural gas has a higher B. t. u. content than an artificial?

The Witness: Yes, sir.

Chairman Geiger: And if the two are blended together the result of the blend would depend upon the proportion that the artificial bears to the natural?

The Witness: And the type of artificial gas used.

Chairman Geiger: Oh, and the type of the gas used. That is, all artificial gases don't have the same B. t. u. contents?

The Witness: No, sir, by no means.

Chairman Geiger: Does or does not the B. t. u. of artificial gas vary more than the B. t. u. of natural gas?

The Witness: I wouldn't say so, no, I should imagine that artificial gas would be more uniform in quality than a natural gas because that would depend on the efficiency of the production of the gas.

Cross-examination.

By Mr. Hebel:

Q. Mr. Smith, did you make all these tests that are indicated on these exhibits marked City's Exhibit 9-a to -4, both inclusive?

A. Practically all of them, yes, sir.

Q. Yourself?

A. Yes, sir.

Q. In 1922 was Lima being furnished with natural gas only?

A. Well, I didn't know except by reputation, that is all.
[fol. 280] Q. You weren't there in 1922?

A. Yes. I mean to say I didn't know the quality of the gas except by reputation, by general hearsay, because I did not examine the gas chemically.

Q. Well, who made the examinations for the year 1922 that are shown on City's Exhibit 9-a?

A. I did.

Commissioner Klinger: You meant to say you didn't examine where it came from?

The Witness: I didn't examine the nature of the gas, nothing but the heating value.

Q. In other words, you did make all these tests?

A. Yes, sir, I made all those tests.

Q. Now, what apparatus did you use in testing B. t. u. content of the gas?

A. I used a standard Sargent Gas Calorimeter.

Q. Was that calorimeter calibrated?

A. Yes, sir, that is an improved type of calorimeter, approved by the United Gas Association, the only type of gas calorimeter that is except a continuous one.

Q. How old was the calorimeter you used?

A. It was new at the time that I—we bought it for this in '22.

Q. And you have used the same calorimeter for all these tests, have you?

A. Yes, sir.

Q. Has it been recalibrated at any time since you first started to use it?

A. I don't think—I don't understand that question because I don't think you understand the operation of a calorimeter. The calorimeter is under calibration all the time. There are only a few things about it that need to be calibrated. Those are the thermometers. It is a very simple instrument.

[fol. 281] Q. Is it standard practice to use a calorimeter for a period of eight years without having it retested for accuracy?

A. Yes, sir. There is nothing to test.

Q. Nothing to test?

A. No, sir.

Q. Well, it is tested when you first get it, isn't it?

A. There is nothing to test. The gas is what is tested.

Q. Well, but the accuracy of the marks and the——

A. There are no marks.

Q. The condition of the meter?

A. There are no marks.

Q. There is a meter on there, isn't there?

A. There is a meter, yes.

Q. Has the accuracy of that been tested before the instrument is sold?

A. I imagine so, yes, sir.

Q. And is there a standard——

A. It is a volumetric meter though.

Q. Is it standard practice not to have that retested if it is used over a period of eight years?

A. I don't see, myself, any necessity for testing it. It is a meter by which others would be tested. Of course, it could be tested by volumentary process.

Q. As far as you know, that calorimeter has never been retested?

A. It has never been retested at all so far as I know.

Q. Just what did you do in making this test, where did you get your gas and what did you do with it from the time you got it until it was tested?

A. The gas is taken right out of the service line in the laboratory and tested.

Q. Well, you run it right into your calorimeter from the line?

A. That is the test.

[fol. 282] Q. That is the test. You fasten your calorimeter on the line of gas?

A. You fasten the calorimeter to the end of the gas line.

Q. And then turn on the gas and then you take your reading off the calorimeter?

A. You read the difference in temperature produced by that amount of gas.

Q. And how many tests did you make on each of these days?

A. Well, at the start of the period of testing, naturally a determination was made of the precision of the test itself. In other words, duplicates and triplicates were obtained.

Q. On every day?

A. On every test.

Q. Well, did you make more than one test on a day?

A. Sometimes, yes, sir.

Q. How far—you made these tests at the waterworks?

A. Yes, sir.

Q. And how far is the waterworks from the storage tanks of the gas company?

A. I would estimate it a mile and a half or something like that.

Q. Mile and a half. And do you know what size main leads out to the waterworks?

A. No, sir.

Q. From which the service is run in to the waterworks plant?

A. No, sir. I think it is a large main though because they used to burn gas there.

Q. Do you know how much difference there is in actual heating value between gas testing around 460 or '80 or 550?

A. Will you repeat that question?

(Question read.)

A. Just that much difference, that is all.

[fol. 283] Q. It is such a difference that it would be noticeable in using the gas for your ordinary purposes?

A. No, sir.

Q. For lighting purposes, for instance?

A. No, sir.

Q. For cooking purposes?

A. No, sir, I wouldn't think so.

Chairman Geiger: Let me ask you this, as a gas is depleted in British thermal units and has a less number of them, does it require more cubic feet of gas to produce the same heat effect?

The Witness: Yes, sir.

Chairman Geiger: Does it require——

The Witness: More even in proportion.

Chairman Geiger: How?

The Witness: It takes more even in proportion, the increase is out of proportion to the decrease in units.

Chairman Geiger: Your other answer didn't seem to show that way. Let me put it this way, assuming that the standard British thermal unit would be 1,000 for a standard gas, would the value of the gas as a heating element diminish in proportion as the British thermal units would fall below 1,000?

The Witness: A little bit more than in proportion. In other words, if you had a gas of a thousand units to do a given amount of work with, it would take more than twice that much gas if the units were decreased by half.

Commissioner Bricker: Why is that?

The Witness: Because of the cooling effect of the increased velocity. In other words, your burning is less efficient, I mean even with perfect combustion in both cases.

Chairman Geiger: Well, they would both turn the little [fol. 284] gas meter just the same?

The Witness: Well, with the gas of lower heating value it would turn it a little bit more than twice as fast.

Chairman Geiger: Well, you mean by that you would have to put more than twice as much through the meter?

The Witness: Yes. Of course, that increase out of proportion is only slight.

Chairman Geiger: The content of the British thermal units has nothing to do with the way the meter turns if it is measuring a cubic foot of gas?

The Witness: No, sir. I didn't understand your question.

Chairman Geiger: That is all right. It has something to do with the bill at the end of the month.

Q. You don't know what calorimeter is used by the company in measuring the B. t. u. content at the plant, do you?

A. No. sir.

Q. Are you familiar with the Thomas Recording Calorimeter?

A. No, sir.

Q. An automatic recording device?

A. No, sir.

Q. Were these tests all made at the same time of day on each day?

A. No, sir.

Q. Through what number of hours would the tests vary?

A. Well, they would vary ordinarily between the period of a working day; that is, it might occur anywhere between 8 o'clock in the morning and 5 o'clock at night.

Q. Were any of them made at what might be termed peak load periods when the——

A. I am not familiar with peak load periods in the gas business. I suppose the peak load periods in the gas business would occur around 6 o'clock at night and I don't [fol. 285] think any tests were made at that time.

Q. Well, they would occur, unless you have a good deal of industrial use for gas, around about an hour or so before meal time?

A. That is what I mean.

Q. Were any of them made around noon?

A. Yes, sir.

Q. You have one item here for April 28, 1928, minus sign, I suppose that doesn't mean anything, but you have 276; that seems to be the only item that is entirely out of line with all the other tests which you made.

A. I think there is one other that is out of line there late in '28 I think, one of 375 I think there.

Q. Can you locate the other instance?

A. I think it is in 1928 somewhere.

Q. Well, this April 28th is in 1928, Mr. Smith.

A. All unusually low results were duplicated or checked. This one here.

Q. Yes. Now, that is the only one. That is the one I read.

A. There is another one.

Q. Maybe it is on here. I missed one of them.

A. I thought I had two abnormal results.

Commissioner Klinger: Is that of so much importance?

Q. Do these minus signs mean anything?

A. No, that is not a minus sign, that is merely a separation of the typewriter, that is a typographical error.

Q. Were these results checked by anyone except yourself as the readings were taken?

A. No. It is impossible for more than one man to read the entry at the same time.

Q. And you personally read all of them?

A. All except a very few toward the end here.

[fol. 286] Q. Do you know whether you read this 276?

A. I know about that one, yes. That was checked several times.

Q. Do you have any idea as to the condition which might cause such a wide variation at that time?

A. No.

Q. You are positive that there was no error in reading?

A. Yes, sir.

Mr. Hebel: That is all.

Mr. Light: That is all. These were admitted in evidence?

Commissioner Klinger: They may be admitted.

Mr. Hebel: We want to object to the admission of them on the ground that they are immaterial and irrelevant.

Commissioner Klinger: Overrruled. Exceptions.

And thereupon City's Exhibits 9-a, 9-b, 9-c, 9-d, and 9-e were offered, introduced and admitted in evidence on behalf of the City of Lima, subject to the above objection and exception of the West Ohio Gas Company, and are herewith submitted, so marked.

And thereupon an adjournment was taken until 10 o'clock A. M. of the following day, Tuesday, April 1, 1930.

[fol. 287] Redirect examination.

By Mr. Light:

* * * * * * *

Q. Mr. Allensworth, is the transmission line of sufficient capacity to supply Lima amply with natural gas?

A. It is.

Q. Including the other municipalities now being served?

A. It is in my opinion.

Chairman Geiger: Well, is it hooked on to any supply?

The Witness: How?

Chairman Geiger: Is there enough gas to supply the needs in Lima, natural gas?

The Witness: Oh my, yes, it hooks on to one of the main lines of the Ohio Fuel Gas Company and gas furnished to Lima, some — it comes from West Virginia, some of it [fol. 288] comes from Ohio.

Chairman Geiger: Well, then, can you tell us as an engineer why they use artificial gas where natural gas is available?

The Witness: I couldn't answer that as an engineer. I don't know why they have a manufactured gas plant in Lima.

Chairman Geiger: Do you mean to say there are pipes leading to an adequate supply of natural gas?

The Witness: Yes, sir, there are.

Chairman Geiger: Already in the ground?

The Witness: Yes, sir.

Chairman Geiger: An available source of supply?

The Witness: Yes, sir.

Chairman Geiger: And they are using the natural gas mixed with artificial gas?

The Witness: Yes, sir.

Chairman Geiger: Do you know what they pay for their natural gas?

The Witness: I think the Company claims that it pays 55 cents a thousand. That is hearsay to me. I am not sure of that.

Chairman Geiger: Do you know what it costs properly to manufacture artificial gas, the process used?

The Witness: The process used there in Lima?

Chairman Geiger: Yes.

The Witness: I think the cost to manufacture should run someplace around 21 cents.

Chairman Geiger: So that as far as they as distributors of gas in Lima, they would have the difference between 21 cents, what it cost them to make the artificial gas, and 55 [fol. 289] cents, what the natural gas would cost them, for all gas that is artificial gas in the mixture of the two gases?

The Witness: If that is the cost, yes.

Chairman Geiger: All right.

By Mr. Light:

Q. That is to say, Mr. Allensworth, the B. t. u. of this blue gas or water gas is not nearly so high as the artificial gas?

A. It is not.

Commissioner Klinger: You mean as natural gas.

Mr. Light: As natural gas, yes.

Chairman Geiger: Now we are getting back to the B. t. u. Let me ask you this, is what is known as the B. t. u. a measure of the thermal quality of the gas, the heating quality of the gas?

The Witness: B. t. u. is a measure of the mechanical equivalent of the heat in the gas. It is not completely a measure of the value of the gas in the usual service.

Chairman Geiger: Well, for lighting purposes is there any difference between the quality of the gas, natural and artificial?

The Witness: The *m*ind of manufacture that is made in Lima?

Chairman Geiger: Yes.

The Witness: Wouldn't be much difference.

Chairman Geiger: As a matter of fact, there is very little of it used for lighting?

The Witness: I suspect practically none.

Chairman Geiger: Do you know what this gas is used for in Lima?

The Witness: Domestic purposes for cooking and some [fol. 290] house heating. There is some sold for commercial purposes and if I remember rightly some industrial consumption.

Chairman Geiger: All right. You couldn't use much gas for industrial purposes profitably at 55 cents a thousand.

The Witness: I wouldn't want to myself, not at that cost, no, sir. I would use some other form of fuel.

Chairman Geiger: How high a priced gas can you use, considering the fact that it is more convenient to use, can you use for heating a house? Where is the prohibitive limit?

The Witness: Neglecting the added convenience of gas, to compete with coal in house heating the gas ought to sell for around about 45 cents.

Chairman Geiger: Anything above 45 cents you pay for convenience?

The Witness: Yes, sir.

Mr. Light: That is all.

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[fol. 291] And also—

FRANK L. PRINGLE, recalled, continued his testimony as follows:

Cross-examined by Mr. Light:

Chairman Geiger: What is your name, Mr. Pringle?

The Witness: Frank L. Pringle.

Q. You are Mr. Pringle. What is your position with the West Ohio Gas Company?

A. I am assistant secretary and assistant treasurer.

Q. And as such your duties are what?

A. Pertaining to the commercial department of the company.

Q. You are familiar with the Company's accounts?

A. I am.

Q. And also in a general way with its property?

A. I am.

Q. And its business?

A. I am.

Q. You know enough about this property to know that this artificial plant there in Lima has a capacity sufficient to supply a population larger than that of Lima?

A. It has.

Q. To at least 75,000, or an increase of 50 per cent in the present population?

A. I would rather not confine my reply to a definite percentage.

Q. It will more than take care of Lima?

A. It will.

Q. With artificial gas?

A. Yes, sir.

Q. And without using natural gas?

A. Yes, sir.

Q. Now, the product that you sell is called a mixed gas?

A. Yes, sir.

Q. How do you mix that gas?

[fol. 292] A. I would prefer that you ask that of our operating engineer, as I stated I was not directly or indirectly acquainted with the method of manufacturing gas. I do know that we make a blue gas and enrich it——

Q. And what?

A. A blue gas and enrich it with natural gas in lieu of oil.

Q. Now, that big tank down there always has in it artificial gas?

A. Yes, sir.

Q. Not a mixed gas?

A. Well, yes, the resultant gas that comes from the gas machines, the gas that goes to the consumer.

Q. Is it mixed before it goes into the holder or after it comes out of the holder?

A. It mixes in the holder.

Q. It mixes in the holder?

A. Yes, sir.

Q. And that is the use of that holder?

A. Yes, sir.

Q. For the purpose of mixing the gas?

A. And also as a storage.

Q. Well, you have less than a day's supply of gas in that holder, don't you?

A. It has a capacity of a million cubic feet.

Q. What is your daily sales in Lima?

A. I think a minimum of two million and a half.

Q. You buy your natural gas?

A. We do.

Q. At what pressure is that gas measured for the purpose of determining how much you should pay for it?

A. I don't remember. The contract with the supplying company specifies the pressure under which the gas is measured but I do not recall that.

Q. Well, as a matter of fact, what is the pressure?

A. I don't recall as to that.

[fol. 293] Q. About what?

A. As I recall, it is 14.2 per cent atmospheric pressure.

Q. How many pounds pressure?

A. I don't recall.

Q. Well, it is measured at a pressure much higher than 4 ounces, isn't it?

A. I couldn't tell you that.

Q. Have you with you a copy of that contract?

Mr. Bentley: It is in evidence. It is in this record.

A. It is in evidence. I haven't it.

Mr. Bentley: That is the supply contract.

Mr. Light: With the Ohio Fuel?

Mr. Bentley: Well, whatever the company, I don't know. The supply contract is here.

Mr. Light: Do you have a copy of that?

Mr. Bentley: No. I can get you a copy but I haven't any.

Chairman Geiger: Do you know how many of your consumers fall in the amount consumed below the 55-cent per thousand cubic feet for all over ten thousand cubic feet? Now, are most of your consumers consumers of less than ten thousand feet?

The Witness: Yes, sir.

Chairman Geiger: So that most of your income is at the rate of 75 cents or more?

The Witness: Well, the rates you are giving me there, Judge, are not the rates charged by our company.

Q. Have you got your rate card here from which——

A. I think I have one. I am not certain.

Mr. Bentley: Mr. Light, I will say to you I am in error. The contract wouldn't be in until we got to the operating [fol. 294] end of this case. We will furnish a copy.

Mr. Light: In fact, I did not intend to ask for a copy.

Mr. Bentley: We will furnish a copy. I don't think we have one here.

Chairman Geiger: How many consumers have you attached to your line in Lima?

The Witness: In round numbers, 10,000.

Chairman Geiger: They are mostly domestic consumers?

The Witness: Yes, sir.

Chairman Geiger: Have you found that your rate that you are now charging—as I understand*ing* you are charging the old ordinance rate?

The Witness: We are.

Chairman Geiger: And have appealed from this new ordinance rate?

The Witness: Yes, sir.

Chairman Geiger: Well, can you tell me from memory what they are if you can't find it? Has anybody got that rate?

The Witness: The first 400 cubic feet or less, $1.25 per month.

Chairman Geiger: 400. Has anybody got it so I can get it?

The Witness: The next 9,600 cubic feet at the rate of $1.05 per thousand cubic feet.

Chairman Geiger: You have that schedule now?

The Witness: The first 400 cubic feet or less is $1.25 per month, the next 9,600 cubic feet is at the rate of -1.05 per thousand cubic feet. The next 15,000 cubic feet at the rate of $1.00 per thousand cubic feet. And all gas used in excess [fol. 295] of 25,000 cubic feet is at the rate of 75 cents per thousand cubic feet.

Chairman Geiger: Now, you say you have 10,000 consumers?

The Witness: Yes, sir.

Chairman Geiger: Do you know how many of them fall with- these given divisions of rates? $1.25, most all of your domestic consumers fall within that in the summer time, don't they?

The Witness: Within the $1.25?

Chairman Geiger: Yes.

The Witness: Of course every customer falls within the first class.

Chairman Geiger: That is whether he burns anything or not?

The Witness: Yes, sir. The majority of them.

Chairman Geiger: $1.25 the minimum rate?

The Witness: Yes, sir, the first 400 cubic feet or less per month, which is a minimum.

Chairman Geiger: 400 or less. He gets it by virtue of your standby service, ready to serve and the fact you are connected up, he has to pay you $1.25?

The Witness: Yes, sir.

Chairman Geiger: Then everybody does?

The Witness: Yes, sir.

Chairman Geiger: Then the $1.05 goes up to 10,000 feet. How many of your people are in that?

The Witness: I can't give you the exact percentage. It would necessitate an analysis of the company's records. But a greater per cent of our customers fall within that class.

[fol. 296] Chairman Geiger: Most of them?

The Witness: Yes, sir.

Chairman Geiger: And from 10,000 to 15,000 feet, are there any domestic consumers in there?

The Witness: There *is*- some, yes.

Chairman Geiger: Some?

The Witness: Yes, sir.

Chairman Geiger: Some domestic. And the 75 cents in excess of 25,000 cubic feet, there are none, are there?

The Witness: Yes, we have customers, domestic use, using over 25,000 cubic feet per month. Not a whole lot but there are some.

Chairman Geiger: All right. But your greatest revenue is derived from the first and second classification?

The Witness: Yes, sir.

Chairman Geiger: All right.

Commissioner Bricker: Coming back just one question, you estimated that your plant is capable of producing gas to how many more consumers than you have at the present time?

The Witness: I would say from my knowledge probably double.

Commissioner Bricker: A hundred per cent more, then, than you are really serving at the present time. In other words, your plant is adequate to the needs of 20,000 consumers upon your present basis of use per consumer?

The Witness: Yes, sir.

Commissioner Bricker: Do you anticipate a growth in Lima of subscribers to the extent of 20,000?

The Witness: We certainly hope some day that we will [fol. 297] get there.

Commissioner Bricker: How far in the future do you estimate that time will be? In other words, when will the full capacity of your plant come into use in the City of Lima?

The Witness: I would be unable to answer that, Judge.

Commissioner Bricker: Haven't you a basis for an estimate on it?

The Witness: All depends on the growth of the city, of course, and the industrial conditions. When those would increase and show a stimulated growth we might expect more population in the City of Lima.

Chairman Geiger: Well, do you think if you would take the ordinance rate, which gives no minimum rate and 90 cents for the first thousand, 80 cents per thousand for the next five thousand, 75 cents a thousand for the next six thousand and 55 cents a thousand for all over ten thousand, if you would accept that rate don't you think you would double your consumers right on that rate?

The Witness: I wouldn't think so, as the rate we are charging at the present time is a rate that the Company voluntarily reduced to on January 1st, 1926. Or, in other words, at the last hearing on a rate for the City of Lima we were charging the first 400 cubic feet $1.25 and the next 24,600 cubic feet we were charging at the rate of $1.15 per thousand and the next 25,000 at $1.05 and over 50,000 feet we were charging 75 cents. That rate became effective on April 1st, 1925, and we continued to charge that rate until January 1st, 1926, at which time we reduced the rate to the rates just given you in hopes that we would stimulate con- [fol. 298] sumption. There was some increase but nothing material. In fact, we did not obtain the results that we hoped we might.

Commissioner Bricker: What was the reason for building a plant twice the needs of the present time?

The Witness: I don't know whether I could answer that, Mr. Bricker, as I wasn't directly associated with those that determined the capacity to which the plant might be increased. Of course, if you were going to build a plant you would not only design it and construct it to take care of your present day demands but quite necessarily you would

build with the idea of expansion of your city that you might be in a position to constantly serve the city at any time they might require your service.

Commissioner Bricker: That is true and you are entitled to the return upon that necessary or seemingly economical development to anticipate the reasonable growth and development of your business, but when you say that you have a plant that is adequate to produce a supply of twice that which is being consumed at the present time, is that within the term of a reasonable anticipation of increased business?

The Witness: Perhaps I should modify my answer to your question to this extent that I would prefer not to go on record as saying that the plant is of such capacity that we could serve twice the customers that we have, I don't want to carry that inference. Our engineers, of course, would be in a better position to more intelligently answer your question and give you information along that line, but I do know we have an added capacity to take care of more customers than we have now without any installation of addtional machinery.

[fol. 299] Chairman Geiger: May I ask when this artificial gas plant was constructed?

The Witness: Years ago, as I understand it, it was originally built in the City of Lima as a manufactured artificial gas plant and sold for lighting purposes only and continued as such for a number of years and at the same time there was in Lima the Lima Natural Gas Company that distributed natural gas for fuel and other purposes to its customers, and as the years went by the natural gas supply got to be very inadequate and at times when a supply of gas was necessary for supplying your customers we didn't have it, and in order to safeguard the Company's investment it was necessary that something might be done in order that it might continue in the gas business in Lima and retain its customers on its line. Therefore, they elected to utilize the plant in serving a mixed gas to its customers. Since that time the Company has been in a position to render service to its customers without any appreciable or material or serious complaint from the customers on the character of service. While we were in the natural gas business only, serving customers for fuel purposes, I have known of many a day where we have had two girls sitting on the phone answering inquiries as to why or what was

the matter with the gas. We were depending on nature to give us natural gas and we weren't getting enough or, in other words, at certain periods in the winter at low temperatures we didn't have a supply of natural gas to serve our customers. A great number of our customers were obliged to use other fuels. And since that time we have overcome that condition and have no complaints generally from our customers on the character of pressures carried [fol. 300] by the Company.

Chairman Geiger: Well then, as I understand, the artificial gas plant was in existence and serving illuminating gas prior to the distribution of natural gas throughout the territory of Lima from fields adjacent?

The Witness: Yes, sir.

Chairman Geiger: In the Auglaize and Mercer County fields. Then the natural gas and the artificial gas were finally consolidated and the natural gas began to give out. Now, did you have to rehabilitate and rebuild to your artificial gas plant in order to serve and make up for the deficiency of the flow of natural gas or did you still use the old artificial gas plant without addition?

The Witness: There was some improvements in the plant in order that we might more efficiently serve the customers.

Chairman Geiger: Well, now, after that was done and the two companies were operating together did you extend your transmission lines to get a better flow of natural gas?

The Witness: No, sir.

Chairman Geiger: Well, you are now getting a better flow of natural gas? You are getting a practically unlimited flow of natural gas if you wish to pay the price they are charging for it?

The Witness: Our records do not show that, Judge. We have records of several times during the winter months where the natural gas supply has been low to such an extent there has been complaints from our customers, that is on natural gas entirely.

Chairman Geiger: Where do you get your natural gas [fol. 301] supply from?

The Witness: As I recall, it comes from Holmes and Medina Counties.

Chairman Geiger: Well, in passing from that place to Lima does it pass by other big lines of natural gas where you could buy a supply of natural gas?

The Witness: I understand in this record of this case that there is a line crossing our line going to Toledo.

Chairman Geiger: High pressure gas line?

The Witness: I so understand.

Chairman Geiger: And natural gas then is procurable in sufficient amounts to supply all of Lima with natural gas if you wish to pay the price for it?

The Witness: We haven't found it so. Before we entered into the last contract we made a number of inquiries from other producing companies in this state and asked them if they was in a position to supply us with natural gas to take care of the requirements of some 16 to 18 thousand customers and our replies received from those inquiries were to the effect that they were not in a position to take on any additional gas consumption, that they through the winter months experienced difficulty themselves in supplying the customers that at that time were attached to the line.

Chairman Geiger: That is during the winter months and the severe winter months. During the summer and more mild periods of the year no difficulty about getting natural gas sufficient in quantity to supply all your customers with natural gas?

The Witness: Through the summer months, we had a [fol. 302] supply of gas in August but of course the customer receiving gas in August wouldn't be satisfied in September if he got up in the morning to cook breakfast and had no supply of gas.

Chairman Geiger: Well, I mean by that during the major portion of the year you could supply all your customers that are now supplied with the mixed gas, supply them with pure natural gas through the present meters and through the present burners without using your artificial gas plant at all?

The Witness: No, that is not true, Judge. When we got on the manufactured basis it was necessary that the Company go to the premises of each customer and adjust their appliances. All appliances had to be adjusted before manufactured or mixed gas could be used in those appliances and it cost the company somewhere between 15 and 20 thousand dollars to make those adjustments to get a different mixture at the burner and a great number of natural gas stoves had low burners and it is advocated that in manufactured gas the flame should be a maximum height of an

inch to an inch and a quarter and if you will notice in natural gas appliances the burners set real low because there has always been a very good pressure of natural gas and the stove wasn't constructed identically the same as is one for manufactured gas. In other words, when you order gas appliances from a manufacturer of gas appliances you are to specify whether the appliance is to be used for natural or manufactured gas and if you was on a natural gas basis through the summer months there would have to be a certain adjustment of the appliances and then when you got to the point of using manufactured gas there would have to be a readjustment of appliances and that couldn't be done, [fol. 303] it wouldn't be economical nor would it be practical.

Chairman Geiger: All right.

Commissioner Bricker: Does your franchise cover the kind and character of gas that you are to deliver to the City?

The Witness: We hold both a manufactured gas and a natural gas franchise in the City of Lima.

Commissioner Bricker: Have you a special franchise or contract of any kind with the City in regard to this particular kind of gas that you are serving now, the mixed gas?

The Witness: I don't think that the franchise specifies mixed gas. Of course, mixed gas is manufactured gas and we have a franchise for manufactured gas.

Commissioner Bricker: Is there anything in the franchise or either of them in regard to the character of the gas, the B. t. u.'s which it shall contain?

The Witness: None whatsoever and as I understand it there are no State standards or State requirements in reference to B. t. u.

Commissioner Bricker: If you have a gas delivered that has 500 British thermal units does it take twice the amount of consumption of that gas to produce the results that a gas with 1,000 British thermal units would produce?

The Witness: I wouldn't think it would take twice as much.

Commissioner Bricker: In other words, with your equipment is it more efficient than the natural gas per number of

thermal units or in ratio to the thermal units which it contains?

The Witness: Well, from the standpoint of heating, of [fol. 304] course, natural gas would be preferred in view of the fact that it contains more B. t. u.'s.

Commissioner Bricker: In the ordinary consumption for domestic purposes would it take twice the amount of the mixed gas which you are now furnishing if it has 500 British thermal units to prepare a meal, for instance, as it would the natural gas with 1,000 thermal units?

The Witness: No, it does not and our records will prove that conclusively as our sales to the customer on natural gas was of a certain figure, then we adopted the method of sending mixed gas to the customers and our sales do not show that they were increased by a——

Commissioner Bricker: There was no appreciable increase?

The Witness: No, sir, there was an increase but nothing in comparison of two to one.

Commissioner Bricker: Are there any users of gas here that might testify as to the efficiency of it or the way it actually works out in consumption by the users?

Mr. Light: We have prepared no such evidence.

Commissioner Bricker: That is all.

Chairman Geiger: Well, now, Mr. Allensworth says that his estimate of what it cost you at the retort to make your water gas which you mix with your natural gas was 21 cents a thousand. What do you know about that?

The Witness: I think we should like to employ Mr. Allensworth as a gas maker if he can produce gas at our plant in the holder at 21 cents.

Chairman Geiger: Well, what does it cost?

The Witness: It costs us practically 43 cents.

[fol. 305] Chairman Geiger: 43 cents a thousand?

The Witness: Holder cost.

Chairman Geiger: Pure artificial gas?

The Witness: Mixed gas that we are serving at the present time to the customer.

Chairman Geiger: Mixed gas. Well, how much do you pay for your natural gas?

The Witness: 55 cents per thousand.

Chairman Geiger: Well, we can't tell what you pay for your artificial from that unless we know how much of the

mixture is artificial and how much is natural. How much does your artificial gas cost you before it is mixed with the natural gas?

The Witness: I haven't those figures here with me and I do not carry them in my mind.

Chairman Geiger: Well, in what percentage are they mixed?

The Witness: 65-35 I think is our present mix.

Chairman Geiger: 65 of artificial?

The Witness: 65 of artificial and 35 of natural.

Chairman Geiger: And the product so made costs you 55 cents?

The Witness: 55 is the cost of the natural gas.

Chairman Geiger: Well, what is the product of these two gases?

The Witness: The mixed gas is a resultant gas.

Chairman Geiger: Well, how much does it cost you?

The Witness: About 43 cents in the holder.

Chairman Geiger: Well, John, there is a problem.

[fol. 306] The Witness: I will be glad for your information to work it out for you.

Chairman Geiger: Natural gas costs 55 cents?

The Witness: Yes, sir.

Chairman Geiger: Natural gas is 35 per cent of the mixture. Artificial is 65 per cent of the mixture.

The Witness: It is just the reverse, 65 per cent natural.

Chairman Geiger: 65 per cent natural?

The Witness: 35 per cent artificial.

Chairman Geiger: I think you said it the other way.

The Witness: Well, I guess I am right, I am confused, I said it right in the first place.

Chairman Geiger: Isn't your amount 60 per cent of the artificial and 40 per cent of the natural gas?

Mr. Bentley: That is right.

The Witness: We have had a fluctuating mixture.

Mr. Light: I have the exact figure.

Mr. Bentley: 40 and 60, isn't it?

Mr. Light: No, it was approximately 50 and 50 the first nine months of 1927.

The Witness: Well, as I said, we have had a varied mixture at times.

Chairman Geiger: But the cost of the mixture after it is mixed is 43 cents a thousand?

The Witness: Yes.

Mr. Bentley: We have some further testimony on the matter of what they cost.

Chairman Geiger: All right.

[fol. 307] The Witness: And when we come to the standpoint of operating expenses in this case our exhibits will be in the case.

Chairman Geiger: Now, wait, let's get back in this other. The only reason you don't use natural gas which costs you 55 cents a thousand and distribute it to your customer where you can give them almost twice as much British thermal units at the same measure of gas is that you don't have enough natural gas to do it?

The Witness: Absolutely.

Chairman Geiger: Or is it because you make more money by manufacturing a low thermal unit gas and mixing it with your natural gas and selling the combination? That is the real reason, isn't it? You make more money on artificial gas than you do on natural gas?

The Witness: Our records will show to the contrary.

Chairman Geiger: Well, I don't see how because you pay 55 cents for your natural gas and the combination is only 43 cents, so you must pay less for your artificial than you do for your natural.

The Witness: That is true.

Chairman Geiger: Can't help it. Consequently you make more money per thousand cubic feet on your artificial than you do on your natural. All right.

By Mr. Light:

Q. Mr. Pringle, tell the Commission how many customers you had on January the 1st, 1924.

A. I couldn't tell that from here, Mr. Light.

Q. Will you secure and let us have that information?

A. Number of customers on January 1st?

[fol. 308] Q. On January 1st, 1924, how many customers did you have? How many customers did you have on January 1st, 1925? How many customers did you have January 1st, 1926? How many customers did you have January 1st, 1927?

Chairman Geiger: Is he answering them?

The Witness: I can't answer any of those. I am going to supply them.

Q. How many customers did you have January 1st, 1928? That is the first day of January, beginning January 1st.

Mr. Bentley: I suppose that is all in the reports to this Commission, isn't it?

Mr. Light: Well, it would be easier for him to get it than for me to find it.

Q. As a matter of fact, Mr. Pringle, you do know this that your customers have been decreasing, don't you?

A. Yes, we have lost some customers.

Q. And your customers have been decreasing since this Commission in January, 1925, at your request relieved you from your obligation to furnish the City of Lima with natural gas; isn't that true?

A. In view of the fact that I do not know just how many customers we have at this time I couldn't intelligently answer your question.

Q. You say that at the time you filed the new schedule making a slight reduction in your gas rates of 10 cents after the first 400 cubic feet you had some noticeable increase in the number of your customers?

A. Well, did I say customers or did I say in gas sold?

Q. Well, which is it?

A. I think we had a slight increase in total quantity of gas sold.

[fol. 309] Q. You also took on some new customers?

A. I don't recall.

Q. But you did sell more gas?

A. We did sell some more, yes.

Q. You do recognize the common economic principle that the lower the price the more you are going to sell; that is true, isn't it, Mr. Pringle?

A. Slightly.

Q. Will you tell the Commission the amount of artificial gas you delivered to your customers in Lima during the year 1925 and the amount of natural gas you delivered to your customers in 1925?

A. I cannot tell at this time.

Q. Would you recognize the figures if I gave them to you?

Chairman Geiger: Are they his report?

Mr. Light: They are off of the Company's book.

Chairman Geiger: Well, give them to him.

Q. I will sort them out and give it to you tomorrow morning. Mr. Pringle, prior to December 1st, 1924, there was operated in the City of Lima the Lima Natural Gas Company, was there not?

A. Yes, sir.

Q. And that company was engaged in furnishing fuel gas to the inhabitants of the city?

A. It was.

Q. And that is the company by whom you were employed?

A. Yes, sir.

Q. They had been in business there a great many years prior to that time?

A. That is correct.

Q. And there was at the same time another corporation known as the Lima Gas Light Company?

A. There was.

Q. And that company's business was the furnishing of [fol. 310] illuminating gas in the City of Lima?

A. That is true.

Q. Do you today furnish gas for any other purpose except fuel purposes?

A. No.

Q. You do not. That is to say, the business of selling illuminating gas no longer exists?

A. I suppose some few people around Lima may be using gas for lighting purposes but I don't know of any personally.

Q. You would be surprised if you saw one of those?

A. Perhaps.

Q. How long has it been since the business of selling illuminating gas was no longer profitable?

A. I can't recall, Mr. Light.

Q. It was before December 1st, 1924, was it not?

A. Yes.

Q. So that on December 1st, 1924, the Lima Gas Light Company had an entirely obsolete plant?

A. No.

Q. So far as the business of that company was concerned it was obsolete?

A. From the standpoint of lighting, selling gas for illuminating purposes, you might speak of it in that way.

Q. From that standpoint it was ready to be charged off as an entirety?

A. I think at that time you mentioned it was engaged in selling a certain amount of gas each month to the Lima Natural Gas who was distributing mixed gas product to its customers.

Q. That company had been organized many years before that and had a system of pipes, a distribution system in the City of Lima?

A. Yes, sir.

Q. Was it as old a company as the Lima Natural Gas Company?

A. I think it was organized before the Lima Natural.

[fol. 311] Q. Both of them were 20 or more years old at that time?

A. I would think so.

Q. On December 1st, 1924, there was also a corporation known as the Wapakoneta Natural Gas Company?

A. Yes, sir.

Q. And another one, the St. Marys Gas Company?

A. Yes, sir.

Q. And another one, the Celina Gas Company?

A. Yes, sir.

Q. All separate corporations?

A. Yes.

Q. All right. Now, on December 1st, 1924, these properties were consolidated and are now owned by the West Ohio Gas Company?

A. That is true.

Q. And there was a consolidation of properties of the Lima Natural Gas Company and the Lima Gas Light Company at that time?

A. Yes, sir.

Q. And the present holder and plant that you now claim as useful property in this case was originally the property which came from the Lima Gas Light Company?

A. Yes, sir.

Q. Beginning December 1st, 1924, the properties of the Lima Natural Gas Company and the properties of the Lima Gas Light Company were then completed and used only for fuel purposes, furnishing gas for fuel purposes in the city?

A. Yes, sir.

Q. Now, at that time how much did you charge off or abandon as property not used and useful, do you remember that?

A. I do not recall.

Q. If I suggest the figure will you recognize it? Was it approximately $11,309.94?

A. I haven't any idea, Mr. Light.

Q. Don't you know that that is approximately the amount?

A. No, I really don't because the opening entry was made [fol. 312] by somebody from Chicago.

Q. Well, if your books show it that would be correct, wouldn't it?

A. Absolutely.

Q. Mr. Pringle, in your process of keeping up your capital assets account of your company, the West Ohio Gas Company, you use annually a depreciation or amortization item, do you not?

A. Yes, sir.

Q. Have you analyzed and followed the depreciation charged on your property by witness Allensworth?

A. Will you kindly read the question?

(Question read.)

A. May I add, Mr. Light, that depreciation and amortization set up on the books of the company is the amount the Company was directed to enter on its book by the Public Utilities Commission of Ohio as the basis of our charge.

Q. Did this Commission order you to set that up on your books?

A. They did.

Q. They ordered you to do that, did they?

A. In its order.

Q. Will your letters show the order where they told you you had to do that? You mean they gave permission for you to do that?

A. Yes.

Q. Yes. That is approximately the same figure as used by witness Allensworth in calculating depreciation, is it not?

A. I have made no comparisons.

Q. Well, you certainly as you went along recognized it as at least approximately the same?

A. Somewhere in that neighborhood, yes.

Q. And you in your accounting subscribe to the process [fol. 313] of charging depreciation off annually?

A. Yes, sir.

Q. And you do that consistently and religiously every year?

A. We hope to.

Chairman Geiger: Have you got your balance sheet here?

The Witness: No, sir, I haven't got it.

Chairman Geiger: Is it in the record?

The Witness: I don't think our late one is. We might have some old ones.

Q. I have nothing since September something, 1927. This matter, so far as I understand it, is as of March the 31st, 1928. Mr. Pringle, between now and tomorrow morning when we reconvene can you furnish the Commission not only with a statement of the number of customers on January 1st of each year as I have indicated but will you make up a schedule showing the amount of artificial and the amount of natural gas sold by you during those years, that is the gross annual sale?

A. I hardly see how it would be possible by tomorrow morning as our records of the company are kept in Lima, of course.

Q. I yesterday furnished you with copies of an examination we made of your books where the balance sheets appear.

Chairman Geiger: Well, have you got them?

Mr. Light: Yes.

Chairman Geiger: Hand them to him and ask him to examine them tomorrow morning.

Mr. Light: He already has them.

Chairman Geiger: Well, we will put it this way then, that you can prove that you copied it from his books and put them in the record and take it for granted they are correct unless he corrects them.

[fol. 314] Mr. Light: I am afraid there is a lot of stuff in these examinations that would properly come under the questions the Commission will have when it starts to fix the rate rather than the valuation but we can tear these sheets out and confine it to that part which refers to valuation.

Q. Let's get one more question, Mr. Pringle. You say that before you made your contract with the Ohio Fuel Gas

Company you inquired of other producing companies at what rate they would furnish you with gas?

A. Yes, sir.

Q. Is there any other company operating in the State of Ohio except the Ohio Fuel Gas Company?

A. Yes, sir.

Q. Who?

A. We inquired of the Logan people.

Q. All right, I will ask you, Mr. Pringle, if you don't know that, as a matter of fact, in your trade and business that the Ohio Fuel and the Logan are both owned by the same holding company, the Columbia Gas and Electric Company.

A. I think that is true.

Chairman Geiger: Well, who owns your common stock?

The Witness: The Midland Utilities Company of Chicago.

Chairman Geiger: And who owns the stock of the Midland?

The Witness: I don't know.

Chairman Geiger: Are you in any way affiliated either with the Ohio Gas Company or the Columbia?

The Witness: No connection whatsoever. The Midland Utilities is an Insull organization.

Chairman Geiger: What organization is your company in?

The Witness: In the Midland Utilities. We are controlled by the Midland of Chicago.

Chairman Geiger: Well, it is a larger group yet?

[fol. 315] The Witness: The Insull organization.

Chairman Geiger: Well, Insull controls the gas in Indiana, doesn't he?

The Witness: Yes, sir.

Chairman Geiger: Well, how far are you from the Indiana lines?

The Witness: 60 miles I judge.

Chairman Geiger: And how far does your pipe go west toward Indiana?

The Witness: It ends in Lima. Doesn't go anyplace.

Chairman Geiger: Doesn't go anyplace westward?

The Witness: No, only south and west of Celina.

Chairman Geiger: So that you are 60 miles from the Indiana state line?

The Witness: I think approximately that.

Mr. Light: Lima is about 45 miles.

Chairman Geiger: But is there any natural gas available from the Insull controlled companies in Indiana?

The Witness: They are all on a manufactured gas basis in Indiana.

Chairman Geiger: Gas you use comes from the east and not from the west of Lima?

The Witness: That is true.

Chairman Geiger: Now, it has been figured out from the percentage that you have given of 60 per cent. artificial and 40 per cent. natural and the rate of 55 cents per thousand for the natural and the rate of 43 cents for the combination that your artificial costs you 35 cents a thousand at the tank where you mix it; is that about right?

[fol. 316] The Witness: Somewhere in that neighborhood, yes.

Chairman Geiger: I notice this ordinance doesn't say that you shall give any particular per cent. either of natural or artificial, you may serve either natural, artificial or mixed without any reference either to British thermal units or without any reference to the percent. of natural as against the artificial; that is correct, isn't it?

The Witness: I think that is true.

Chairman Geiger: So that you could under the ordinance serve a gas that costs you 35 cents a thousand, that is as artificial gas, without any admixture of the higher priced 55 cent natural gas?

The Witness: That is perhaps true.

Chairman Geiger: But it wouldn't give a satisfactory heating unit, would it?

The Witness: That is true.

Chairman Geiger: So you have mixed the higher price gas, that is the natural gas, in as small a proportion as you can because it costs you more, to make a mixture that will satisfy your consumers?

The Witness: I couldn't say that that is the reason that is done. I don't think that I am in a position to answer you, Judge, on that, whether that is the thing back of the particular percentage of mix they are having, I wouldn't say that.

Chairman Geiger: Well, of course, the price it costs you if you don't buy it from your parent company or associated

company has something to do with the price at which you can sell it?

The Witness: That is true.

[fol. 317] Chairman Geiger: And if you can make an artificial gas at 35 cents and you have to pay 55 cents for your natural and you have a standard rate at which you can sell it, it doesn't make any difference whether it is natural, artificial or mixed, then naturally so far as the traffic will bear you have given them artificial gas?

The Witness: Yes, sir.

Chairman Geiger: So you can make more money out of it?

The Witness: Yes, sir.

Chairman Geiger: Well, now, if you were selling artificial gas which cost 35 cents a thousand to your 10,000 customers daily in Lima at the schedule that the ordinance has fixed, wouldn't you make a very nice profit?

The Witness: You understand the price that we have talked about all along on the price of gas is the holder cost ready for distribution. In addition to that charge you would have your distribution charge, your commercial cost, your general cost, your taxes and all those incidental things so you would get a price up there where——

Chairman Geiger: I understand that. That is the cost when it is in the retort before you begin to distribute it.

The Witness: That is in the holder ready for distribution.

Chairman Geiger: Well, on what price coal is that?

The Witness: I think coal is something more than—I don't recall offhand but something more than three dollars a ton that we pay.

Chairman Geiger: The price of coal gone down? It has, hasn't it?

[fol. 318] The Witness: I think so.

Chairman Geiger: You can make it less than 35 cents?

The Witness: I don't know that.

Chairman Geiger: Are these appliances with which you manufacture water gas up to date appliances or are they some that were handed down from former generations?

The Witness: As far as I know it is the latest known apparatus that could be installed in a gas plant.

Chairman Geiger: Right up to date?

The Witness: As far as I know it is, yes.

Commissioner Klinger: Mr. Pringle, I would like to ask this question. You have studied, of course, the practices and the methods adopted by other gas companies in other communities?

The Witness: I can't say that I have.

Commissioner Klinger: Well, assuming then that at Findlay and at Ada and at Marion and at Columbus and Toledo and every other point, towns that are larger and smaller, the people are getting their gas service for much less than you are asking, what explanation have you for that?

The Witness: I would say, taking the case of Ada, the people that are supplying the gas in Ada are producers of gas and in addition to that the Ada company does not own any transmission lines, they simply run out about a mile out of town and join the transmission line that comes on the Harding Highway. Our company is the owner of 44 miles of transmission line that extends east of Lima where we join the producers or the supplying company's line. That is one of the elements of difference. Another is local conditions. The same thing applies to manufactured gas. Lima gets gas at the prices we stipulated this after- [fol. 319] noon, yet 30 miles away manufactured gas is sold for $2.50 and I am referring to Van Wert. Why couldn't Van Wert get it at the same price that Lima does? There are conditions and factors in there that have to be given consideration.

Commissioner Klinger: I want to know what those factors are. Possibly it is not justified but I feel it hurts the local community to have the utility service higher than other communities similarly situated and I am interested in overcoming that if it is possible.

Mr. Light: Might I suggest one of those factors? The fact that we are required to maintain a transmission line 44 miles long sufficient to supply us and together with that maintain a manufacturing plant big enough to supply twice our needs, three times as much as it needs.

The Witness: The Judge asked me a question. May I name a few towns on a manufactured gas basis that have gas rates twice as high as the rate in Lima?

Commissioner Klinger: Yes.

The Witness: I have here before me a list of towns served by manufactured gas in Indiana, Michigan, Pennsylvania

and Kentucky, manufactured gas rates. The rates I have here are taken from Brown's Directory of American Gas Companies. And in practically every instance here you will find gas that is much higher than is charged in Lima.

Commissioner Klinger: Now, can you give an explanation; if it is true in those isolated communities what is the explanation for it?

Mr. Light: What edition of Brown did you take that from?

[fol. 320] The Witness: 1928 edition.

Commissioner Klinger: That is what I want to get at, what explanation is there for it?

The Witness: There is a lot of elements that enter into it in the cost of manufactured gas. One, the company that is making manufactured gas and using oil for an enricher, they are able to buy oil, using so many gallons per thousand, they are able to buy coal or they are able to buy coke or other manufacturing materials going into it.

Commissioner Klinger: Isn't that a product that one person or company can buy as well as another?

The Witness: Why, it is usually generally accepted that if you enter into a contract for all of your requirements, say for your coal from one concern, you can get it cheaper than if you went out on the market and buy it from every Tom, Dick and Harry.

Commissioner Klinger: I mean you can do that just as economically and advantageously for your community you serve as any other company can for any other community, can't you?

The Witness: I think so.

Commissioner Klinger: That is what I am trying to bring out. Now, why does Lima and that vicinity and if there are other towns that you have in mind, why is it that they must pay so much more when here in Columbus they are paying 45 cents, I believe, or 48, and you say you have got to pay 55 cents for their raw material. We have it distributed here at 48 cents. Why can't your company serve its community as economically as this company is serving this one?

The Witness: In the first place, if we had twice the vol-
[fol. 321] ume that we have got we could sell our gas cheaper.

Commissioner Klinger: Well, now, probably if you would reduce the price like they did maybe you would have it.

The Witness: We have tried that.

Commissioner Klinger: When?

The Witness: January 1st, 1926, we decreased the price of gas.

Commissioner Klinger: How long did you try it?

The Witness: It is being tried today. That rate is continued up to the present time.

Commissioner Klinger: Oh, you mean that $1.25 for the first 400 cubic feet?

The Witness: Yes.

Commissioner Klinger: Well, of course that is not comparable to this Columbus rate.

The Witness: Well, we are on manufactured gas in Lima and they are on natural gas here. It has always been known and recognized that natural gas has been cheaper than manufctured gas.

Commissioner Klinger: Then why don't you get natural gas?

Chairman Geiger: Now here, your natural gas costs you 55 cents and your artificial gas costs you 35 cents and your mixed gas costs you 43 cents.

The Witness: And when I first went in the company, Judge, we sold natural gas in the winter at 27½ and 22½ cents a thousand and 33 cents in the summer months. That is the greatest difficulty today is on account of the low price people have been inclined to waste the product in the [fol. 322] past and we are suffering the natural gas shortage as you read it in every magazine.

Commissioner Klinger: You are trying to conserve this natural gas?

The Witness: Even this Commission in years past have issued executive orders ordering customers to curtail its use in the winter months.

Commissioner Klinger: Well, you are speaking of the period when they drilled down such shallow wells. Since then they have started in drilling wells 5,000 or more feet, getting altogether a different supply of gas. Gas is produced in great deal more volumes now than it was produced back when you and I began to have anything to do with gas. We used to get that gas up in Auglaize County for 10 cents a thousand.

The Witness: And at the time we entered into the last contract we wrote a letter to each of the city councils in which we operate asking each city official if he knew of any

supply of gas that we might procure at any price to serve our communities. We received no reply whatsoever.

By Mr. Light:

Q. Isn't gas sold in the field, isn't it a standard staple price of 15 or 16 cents?

A. I couldn't say that there was a standard price for natural gas.

And thereupon an adjournment was taken until 9 o'clock A. M. of the following day, Wednesday, April 2, 1930.

[fol. 323] Morning Session

Wednesday, April 2nd, 1930.

And also—

FRANK PRINGLE, resuming the stand, continued his testimony as follows:

Cross-examined by Mr. Light:

Q. Mr. Pringle, you stated yesterday that before buying your gas from the Ohio Fuel Company you had made inquiries and efforts to buy gas from other companies?

A. Yes, sir.

Q. The only other company that you tried to negotiate with would be the Logan, wouldn't it?

A. I remember two distinct inquiries were made, one the Logan Gas Company and the other the East Ohio Gas Company of Cleveland.

Q. The East Ohio is so far away from Lima that it would be impractical to come to Lima with their line; they do not have a line west of Cleveland, do they?

A. I do not know that.

Q. And the Ohio Fuel and the Logan are both subsidiaries of the Columbia Gas & Electric?

A. Ohio Fuel and the Logan?

Q. Yes, sir?

A. As I understand it; yes.

Q. The gas field you have learned in your experience in Ohio covers an area extending north and south from Cleve-

land a little east of Columbus south to the river and down into West Virginia, doesn't it?

A. As I understand the majority or the greater part of the production is in the eastern part of the state.

Q. Well, that is just east of the center of the State?

A. Yes, sir.

[fol. 324] Q. And that extends up into Canada, a strip of gas producing territory, area?

A. I suppose. I am not very well acquainted with the production of natural gas.

Q. And The Ohio Fuel Company have a transmission line which extends from about Lancaster in a northerly direction somewhere west to Toledo where they distribute gas?

A. I do not know that.

Q. Don't you know that The Ohio Fuel distributes gas in Toledo?

A. No, sir.

Q. Don't you know that the Ohio Fuel——

A. Northwestern Ohio is the gas company in Toledo.

Q. That is the Ohio Fuel, is it?

A. Northwestern Ohio?

Q. Yes, that company is owned by The Ohio Fuel, the distribution company in Toledo?

A. I couldn't answer that question.

Q. And The Ohio Fuel furnishes gas to Columbus?

A. I don't know that.

Q. You do not know that. Anyway, this transmission line extends just west of Marion in its course north?

Chairman Geiger: Which transmission line, the Ohio Fuel?

Mr. Light: Of the Ohio Fuel?

The Witness: Not to my knowledge.

Q. Well, your forty-four mile transmission line connects up with that line going to Toledo, doesn't it?

A. No, our line as I understand it, connects with a line going in an easterly direction.

Q. Yes, but that is only a short distance?

A. Well, it runs to the Holmes and Medina counties, a supplying company.

[fol. 325] Q. Then your best information is that you are not supplied by this transmission line which extends to Toledo?

A. That is right.

Q. But your line crosses that line?

A. That is what this—that is in this case, but to my knowledge it doesn't. I have no knowledge of just where the lines cross, but I have heard it stated in this room that it did.

Q. Well, you do know that Toledo uses natural gas only?

A. Natural gas and manufactured gas also.

Q. And water gas?

A. I don't know whether they are making a water gas or a coal gas in Toledo. However, the natural gas is the predominant gas in Toledo.

Q. Well, the manufactured gas in Toledo is just a distribution over a small area?

A. I understand a small number of customers furnished.

Q. And the natural gas is the gas used in Toledo?

A. Chiefly, yes.

Q. And also natural gas is the gas used in Columbus?

A. Yes.

Q. And natural gas is the only gas used in the municipalities west of Lima, that is Cridersville, "Wapac", St. Marys and Celina?

A. That is true.

Q. Which you are supplying?

A. Yes, sir.

Q. Do you know of any other municipality in Ohio where they use a mixed gas?

A. I am not real certain, but it runs in my mind that Ashtabula does.

Q. The use of mixed gas is not general, is it?

A. No.

Q. Will you tell me, Mr. Pringle now how many customers [fol. 326] you had January 1st, 1924?

A. As I stated yesterday I couldn't, Mr. Light, until I get my records in my Lima office. I haven't anything here to tell me that.

Q. Well, we will leave it this way, you have less customers now than you had January 1st, 1924; you do know that, don't you?

A. I couldn't say that for certain.

Q. Well, in '25, '26 and '27 each year you had less customers, did you not?

A. I wouldn't say that for sure.

Q. You don't know?

A. Not at this time, no.

Q. You wouldn't say that isn't true?

A. I wouldn't say either way until I made sure.

Chairman Geiger: Well, have you a record of it?

Mr. Light: Yes.

Chairman Geiger: Well, ask him to look at the record and see if that is a correct copy of the record.

Q. I wonder if we could do that this way, your company files a report annually as to the number of customers with this Commission?

A. Yes, sir.

Mr. Light: I wonder if we could prepare a statement of that report and put it in the record.

Mr. Bentley: Absolutely, if it is relevant. I don't know what it proves, but if it is relevant it may go in that way.

Mr. Light: I am only offering it for this purpose, for the point if this is a hundred percent efficient company you wouldn't be losing customers.

Mr. Bentley: Of course, we don't consider that proves that.

Mr. Light: It might tend to indicate that.

Commissioner Bricker: That is the best way to get it. I [fol. 327] suppose you can get those figures or have Mr. Hanna take it off.

Mr. Bentley: Sure, they can supply that.

Q. Does that report to the Commission also show your volume of gas sold?

A. It does.

Q. Does that show the amount of natural gas and the amount of artificial gas?

A. It does.

Q. It shows the amount of each?

A. Yes, sir.

Mr. Light: I wonder if we could have the further stipulation to that, would that be all right?

Mr. Bentley: I didn't hear you.

Mr. Light: In this statement that we get out of the files of the Commission we will include the amount or the volume sold and Frank says that that shows also the amount of natural gas and the amount of artificial gas.

Mr. Bentley: Whatever is in those statements is correct undoubtedly and you can use any part of it that is proper.

Commissioner Bricker: Right here, are the ordinances of the municipality in regard to the franchise rights of the company in the record?

Mr. Bentley: I don't think so.

Commissioner Bricker: They are not here at all?

Mr. Bentley: I don't think so.

Mr. Light: I think I have those ordinances over in the hotel. The Commission would like to have those franchise ordinances?

Commissioner Bricker: Yes; you can get them at noon. It isn't necessary to have them at this time.

[fol. 328] Q. You buy this natural gas at the pressure of eight ounces and sell it at a pressure of four ounces?

A. I think the gas is measured at eight ounce basis.

Q. That is, it has a twenty pound pressure, supposed to have?

A. And as I understand they maintain a pressure of two inches.

Commissioner Klinger: That doesn't answer his question.

Q. I say you buy your gas at a pressure of eight ounces and sell it at a pressure of four ounces?

A. No, it is calibrated in inches of water pressure.

Q. Explain that, I don't understand that?

A. Well, I am not qualified to testify on the subject of measurement of gases and I wouldn't attempt to.

Q. Why do you have in your contract with The Ohio Fuel eight ounces?

A. Well, I suppose the engineers of our company can give you reasons why that is. It seems to be, as I would understand it, a recognized practice, custom, to have a definite pressure under which the gases should be measured.

Q. You buy it in ounces and sell it in inches?

Commissioner Klinger: Well, the inches is the measure of the ounces, isn't it? It is a device by which it is measured?

The Witness: Yes, sir, a recording gauge, yes.

Q. Sometime in the year '27 or '28 about the time this case was being started down at Lima, Mr. Howard Key, an auditor of that city, made an examination of your books, did he not?

A. I think Mr. Kay was in our place in October, 1927, if I am not mistaken.

Q. But he did make an examination of your books?

A. Yes, he did.

[fol. 329] Q. And that was done by employment by the city?

A. Yes, sir.

Q. And you permitted him to go over your books?

A. Gladly.

Q. Make the examination?

A. Yes, sir.

Q. And you gave him your balance sheets and your cost sheets and all of the information that was available in your office?

A. We gave him everything we could and everything he requested.

Q. And you keep an efficient set of books?

A. We feel that way.

Q. In your balance sheets since December 1st, 1924, you do not carry a separate item of the property located in Lima, do you Mr. Pringle, in your balance sheets?

A. No.

Q. And the only way that anybody can tell from your books what property is in Lima is to go back and trace the history of the property down into that balance sheet prior to—going back of December 1st, 1924?

A. That would be one way.

Q. Prior to December 1st, 1924, we find the Lima property in the balance sheet of the Lima Natural Gas Company and the Lima Gas Light Company?

A. Yes, as two separate corporations.

Q. Yes, I mean in the two statements?

A. Yes, sir.

Q. We find all of the Lima property?

A. Yes, sir.

Q. And we also find the valuation of the transmission line 100%; that is, the transmission line was owned by the Lima Natural Gas Company?

A. That is true.

Q. Now then, the transmission line was not constructed by the Lima Natural Gas Company, was it, but was constructed by the Northern Indiana Gas & Electric Company?

A. Well, I will say to my knowledge that that isn't true.

[fol. 330] Q. Your books show that, don't they?

A. I couldn't say any place where our books show that information.

Q. You do not have in your books any construction expense for the installation of that transmission line, do you?

A. As far as I know, no.

Q. But that line was constructed in 1909, was it not?

A. Somewhere, I have heard.

Q. By the Northern Indiana Gas & Electric?

A. Well, not to my knowledge.

Q. And was purchased by the Lima Natural Gas Company from the other company in 1910?

A. The Northern Indiana Gas & Electric Company never entered or had any connection whatsoever with any of what we call the old Ohio companies or the Lima Natural or Lima Gas Light until the Insull organization obtained control of our company.

Q. Well, then, what was the name of the company that built this transmission line?

A. As far as my knowledge goes the Lima Natural Gas Company.

Q. You have no record in your office of any expenditure of money for the construction of that line, have you?

A. Not to my knowledge.

Q. In 1909?

A. No, not to my knowledge.

Q. But you do show in your books in 1910 a purchase of that line, don't you?

A. I don't recall the place where that shows.

Q. If your books show that it would be correct, wouldn't it?

A. I would think so, yes, but certainly never from the Northern Indiana Gas & Electric Company.

[fol. 331] Q. Well, I may have that name wrong, but your books show a purchase of that line in 1910 after its construction in 1909?

Chairman Geiger: Was it constructed by a utility company, or just by a construction company that didn't render any utility service?

Mr. Light: My best information is, I may be wrong, it was constructed by a utilities company.

Chairman Geiger: The record here of the Commission would show the sale and purchase.

Mr. Light: The only information I have is from the auditor saying their books show it was purchased in 1910.

Q. Now then, prior to January 1st, 1922, no depreciation was ever charged off your capital on your books, off your fixed assets?

A. As far as my knowledge goes we have never set up a depreciation until we were permitted to, or permitted to do so by orders issued by the Public Utilities Commission of Ohio.

Q. You did set up a small depreciation in the years 1922, '23 and '24, did you not, Mr. Pringle, on structures and equipment, but nothing on transmission and distribution systems and then after, beginning January 1st, 1925, you started charging off depreciation in line with the Commission's ruling at that time?

A. We have set up depreciation charges on two orders issued by the Commission, and if my memory serves me right, I think the first was sometime in '21, and the last order was dated April, 1924 or '25.

Q. The order of April, 1925, was the order releasing you from your obligation of furnishing natural gas to the city of Lima when you had placed yourself in a position to supply [fol. 332] the city of Lima with manufactured gas?

A. The order I have in mind fixed rates that were put into effect on April 1st, 1925.

Chairman Geiger: For artificial gas?

The Witness: Yes, sir, in the city of Lima. I think I have a copy of the Commission's order.

Chairman Geiger: Did that permit you to abandon the natural gas?

The Witness: We were permitted, as I remember, by the Commission to serve manufactured gas and to abandon natural gas service in the city of Lima.

Chairman Geiger: Was that ever done?

The Witness: Yes, sir.

Chairman Geiger: There was a period of your existence in which you furnished artificial gas only after natural gas had been used and you had not been receiving a sufficient supply?

The Witness: I am not certain on that, Judge, I am not real certain.

And thereupon a paper writing was marked for the purpose of identification as City's exhibit 10.

Q. Mr. Pringle, City's exhibit 10 is the order to which I refer. That is the order where you were released from furnishing natural gas by this Commission upon your furnishing to Lima manufactured gas?

A. Yes.

Q. You remember that?

A. Yes, sir.

Commissioner Bricker: By authority of what provisions was that action before the Commission, under the Miller [fol. 333] Law, Section 50423, do you remember?

Mr. Bentley: I don't remember. I don't think I had anything to do with that personally.

Mr. Light: I am sure I had nothing to do with it. The truth is I just happened to notice this order.

Commissioner Bricker: Now is this Coldwater field that is mentioned in this ordinance, Mr. Pringle, the same field from which you get your gas at the present time?

The Witness: No, we have never obtained any gas in the Coldwater field at Lima. That was injected into the case as having an available supply of natural gas in the Coldwater field by the other side.

Commissioner Bricker: Is this an exhibit in this case, Mr. Light?

Mr. Light: I was going to offer it as a part of the cross-examination of Mr. Pringle.

Commissioner Bricker: You never did receive any gas from the Coldwater field at all then?

The Witness: In Lima, no, we never did.

Commissioner Bricker: Where were you receiving your gas at the time this permissive order was given by the Commission?

The Witness: We have received it from The Ohio Fuel Gas Company and its predecessor companies for a number of years.

Commissioner Bricker: As far as that order is concerned then, the Commission might just as well have said that there was no gas available in Texas for your company.

Mr. Light: Yes, the same thing. I think they did find a little gas there.

[fol. 334] Mr. Bentley: Yes, there was a little gas around Coldwater but it was used in Celina.

Mr. Light: But that was never used in Lima.

Mr. Bentley: No.

Mr. Light: I will offer this at this time, as a part of the cross-examination.

Commissioner Bricker: It may be admitted.

And thereupon the exhibit last above offered was introduced and admitted in evidence on behalf of the City of Lima, and is herewith submitted, marked City's exhibit 10.

By Mr. Light:

Q. You at this time plan, Mr. Pringle, or at least propose to furnish the municipalities of Cairo, Columbus Grove, Ottawa and Leipsic with artificial gas from this plant at Lima too?

A. We have made such a proposition to three of the towns.

Chairman Geiger: Are they eastward of you or westward?

The Witness: North.

Q. That has nothing to do with natural gas, that is all artificial gas?

A. Yes.

Chairman Geiger: You would have to lay a pipe to do that?

The Witness: Yes.

Chairman Geiger: No existing pipe line?

The Witness: That is true.

Q. And I believe, Mr. Pringle, yesterday in response perhaps to a question from the Commission, you stated that it cost you thirty-seven cents to manufacture this water gas?

A. Did I say water gas or the mixed gas?

[fol. 335] Q. What did you say?

A. Well, I—the blue gas we make costs somewhere around twenty cents plus.

Chairman Geiger: What is that?

The Witness: The blue gas, straight manufactured gas we make in the plant which mixes with natural gas runs

somewhere twenty cents and a little better to make the blue gas.

Q. Mr. Pringle, your first major production of water gas was in the year 1925, or were you in production before that?

A. Why, we have always made water gas in the plants at Lima.

Q. But I mean following the order of the Commission here?

A. Yes.

Q. And that year that water gas cost you 25.4 per thousand cubic feet?

A. According to this report, yes.

Chairman Geiger: 1925?

Mr. Light: 1925.

Q. This report is taken from your books?

A. Assuming it is correct.

Q. The B.t.u. of that gas that year was 250, was it not?

A. Well, I don't know what the B.t.u. was.

Q. The next year you reduced the B.t.u. down to 150, didn't you?

A. Not to my knowledge.

Q. And that year the thousand cubic foot cost was 20.3 cents?

A. Well, that could be accounted for by—manufacturing material and B.t.u. wouldn't necessarily cost that. The difference of your manufacturing material or your labor would have a factor to go into the cost of the gas.

Commissioner Klinger: Well, of course, the reasons may [fol. 336] be given, but is that correct? Is that a fact?

The Witness: Yes, sir.

Chairman Geiger: Well, now, wouldn't it be very much better if you can do it to set out in a table which you can make up, let it go in the record that way instead of injecting all these questions?

Mr. Light: Well, if the witness will subscribe to my figures that I am using——

Chairman Geiger: Well, you can make it off the record there. You admit that those figures are correct?

The Witness: If they are an exact copy of our records in our Lima office I will subscribe to them.

Chairman Geiger: And what you want to show is each year the cost of water gas and B.t.u. content of the water gas?

Mr. Light: I would suggest, if the Commission please, that inasmuch as we are going to have a tabulation of customers and quantities and classes of gas out of the Commission's record, that this can be added to that exhibit.

Chairman Geiger: Let me ask a question or two here. As I understand, the first structure for the service of Lima was an artificial gas plant, is that correct?

The Witness: Yes, sir.

Chairman Geiger: Afterwards natural gas was made available for Lima?

The Witness: Yes, sir.

Chairman Geiger: And the artificial gas plant then was closed down, went out of business?

The Witness: It has never closed down.

[fol. 337] Chairman Geiger: Well, it didn't function for making artificial gas and the distribution of it through your mains when the natural gas was obtainable at a low price?

The Witness: As I understand, originally the gas light company, the artificial plant sold gas for fuel purposes in Lima years ago at $4.00 per thousand cubic feet and continued that until such a time that natural gas was available. Then as I understand it, the manufacturing company sold then gas for illuminating purposes and the natural gas was then substituted for the fuel.

Chairman Geiger: Then the natural gas became more scarce?

The Witness: Yes, sir.

Chairman Geiger: And you rehabilitated and brought down to date your artificial plant?

The Witness: Yes, sir.

Chairman Geiger: And then sold for a time artificial gas alone to the exclusion of natural gas?

The Witness: Yes, sir.

Chairman Geiger: Then some natural gas became available and you mixed that with the artificial gas?

The Witness: We utilized the natural gas available, yes, and mixed it.

Chairman Geiger: But there was a period when no natural gas was served because it wasn't available?

The Witness: No, Judge, it wasn't available in sufficient quantities to adequately serve the customer and for that reason we were obliged to resort to the mixed gas.

Chairman Geiger: Wasn't there a time when you served purely artificial gas without any admixture of natural gas? [fol. 338] The Witness: For illuminating purposes, yes.

Chairman Geiger: Were you still serving natural gas for heating purposes?

The Witness: We were serving natural gas at the same time, yes, separate corporation.

Chairman Geiger: Through separate pipes?

The Witness: Yes, that is true.

Chairman Geiger: Now you have a forty-four mile pipe extending eastward from Lima?

The Witness: Yes, sir.

Chairman Geiger. Does that extend to the producing field or is that the point at which a producer furnishes you gas through its main brought to that point?

The Witness: We join the producer's line at that point and as I understand it, the producer's line continues from that point eastward to more than 150 miles to its field.

Chairman Geiger: The forty-four miles does not take you to the producing fields at all?

The Witness: No, sir.

Chairman Geiger: Now when you buy the gas at fifty-five cents, do you have any pumps between the east end of your forty-four mile line to furnish you pressure to get it into Lima or does the seller furnish you sufficient pressure to bring it in?

The Witness: The gas is delivered to us at the city gates or the corporation limits of the city of Lima and they have pressure on their lines, I think they have one station at Bucyrus and there is another station at another location [fol. 339] along the line, but our company has no boosters or compressers to bring the gas on to Lima.

Chairman Geiger: Well, they deliver it to you at fifty-five cents at Lima?

The Witness: Yes, sir.

Chairman Geiger: Part of that transmission is through forty-four miles of you pipe?

The Witness: Yes, sir.

Chairman Geiger: Do you get any rental from them for the use of your pipe line for forty-four miles?

The Witness: No, sir.

Chairman Geiger: They give you the gas at fifty-five cents through you own pipe line?

The Witness: Yes, sir.

Chairman Geiger: But measured at Lima?

The Witness: Yes, sir.

Chairman Geiger: And not at the eastern end of the pipe line?

The Witness: That is true.

Chairman Geiger: All right.

Mr. Bentley: You didn't mean to say, Mr. Pringle, in response to Judge Geiger that you ever sold artificial gas in Lima for fuel purposes alone, did you?

The Witness: No. The first gas, I meant to say the first gas that we sold was sold around $4.00 a thousand. Artificial gas has always been used for illuminating purposes in the city of Lima.

Chairman Geiger: This did happen, however, didn't it, [fol. 340] Mr. Pringle, that after the other, when the natural gas went down to its lowest ebb it came up again so that you could use more of it for heating purposes than that which was used when it was at the low ebb?

The Witness: No.

Chairman Geiger: Not so?

The Witness: That is not true, Judge.

Chairman Geiger: You use now one system of piping for delivering, and that was the system that was laid for what? For the artificial gas or for the natural gas?

The Witness: Both.

Chairman Geiger: Both?

The Witness: Yes, sir.

Chairman Geiger: You couldn't deliver them both through the same pipe unless they were mixed before they come in the pipe?

The Witness: Yes, sir.

Chairman Geiger: Did houses have two pipes at one time, one for natural and one for artificial?

The Witness: Yes, sir.

Chairman Geiger: And when you combined them and served it as a mixed gas, which gas pipe did you use, the old artificial gas pipe or the old natural gas pipe?

The Witness: I don't know exactly, but I suppose in cases some was used through one and some through the other.

By Mr. Light:

Q. The amount charged off on the occasion of that consolidation was approximately $11,000, was it not?

A. The reference you make to a charge-off is nothing out [fol. 341] of the ordinary. If you will examine our records you will find that each and every year the company has been in operation we abandon and condemn certain units of property and retire the former capital account. The eleven thousand you refer to, I don't know just what that is made up of, but to me it isn't unusual.

Q. Well, was there any obsolescence brought about by the consolidation of this light company and this gas company?

A. Yes, there was some of the property abandoned, yes.

Q. How much?

A. I couldn't answer that question.

Q. Not very much, was there, not a substantial figure?

A. I am not prepared to answer that, Mr. Light.

Chairman Geiger: In your engineers report stating what the value of your property is, do there appear any gas pipes used in distribution which are not now used for distribution of the mixed gas?

The Witness: No, sir.

Chairman Geiger: There were at one time two systems of pipe?

The Witness: Yes, sir.

Chairman Geiger: A natural and an artificial?

The Witness: Yes, sir.

Chairman Geiger: Then one or the other of those was abandoned, or at least part of it?

The Witness: Yes, sir.

Chairman Geiger: Now that has all been charged off?

The Witness: Yes, sir.

Chairman Geiger: And doesn't appear in your inventory?

The Witness: It does not.

[fol. 342] Q. How much is charged off of that; where does that appear?

A. Well, I couldn't tell you from here, Mr. Light, unless I examined the records of the company. Of course, I can't carry those things in my mind.

Commissioner Bricker: What is the highest B.t.u. content that any of the artificial gas that is manufactured carries?

The Witness: Manufacturing companies?

Commissioner Bricker: Yes.

The Witness: I think you will find that the average B.t.u. sold throughout the United States by manufacturing gas companies is about 540 B.t.u.'s on the average.

Commissioner Bricker: Does it cost more to manufacture gas with 500 B.t.u.'s than with 250?

The Witness: Yes.

Commissioner Bricker: It does?

The Witness: Yes, sir.

Commissioner Bricker: Different preparation necessary?

The Witness: Yes, sir.

Commissioner Bricker: Different process?

The Witness: Yes, sir.

By Mr. Light:

Q. That is done by adding a gas oil, is it not?

A. Oil for an enriching agent, yes.

Q. And that is a gas oil?

A. Yes, sir.

Q. That is a commercial product which you can buy?

A. Yes, sir.

Q. It would be more economical to operate a coal gas artificial plant, would it not?

A. I am not qualified to answer that question.

[fol. 343] Chairman Geiger: Are you qualified to say that you could produce more British thermal units from a gas manufactured from crude oil than you can from water gas?

The Witness: I am not qualified, Judge.

Chairman Geiger: You don't know anything about the relative prices?

The Witness: No, sir.

Chairman Geiger: It appears from a question that it is possible that the Lima Natural Gas Company bought those transmission lines, 44 miles, in 1910. Do you know what they paid the company from which they bought for the 44 miles of pipe?

The Witness: I was somewhat astonished at that statement. I suspected, but I don't want to make it for a certainty, that back in 1910 the Lima Natural acquired from the Lima Gas Light Company the million foot holder and certain gathering and distributing lines, but I can't imagine the item Mr. Light mentioned of $10,000 having anything to do——

Mr. Light: $10,000?

The Witness: Did you say $10,000?

Commissioner Bricker: You mean the purchase in 1910?

The Witness: 1910 I should have said, has anything to do with the transmission line. I can't imagine that, and I am certainly going to investigate that.

Chairman Geiger: Well, do you know whether your Lima Natural Gas Company, the present company bought the transmission line from anyone?

The Witness: I do not know that, no.

Chairman Geiger: You don't know whether they bought it or didn't?

[fol. 344] The Witness: No, sir.

By Mr. Light:

Q. When you look for that, Mr. Pringle, look for an item of about $250,000 at the time you acquired that transmission line?

A. 1910?

Mr. Light: Yes.

[fol. 345] And also—

Howard L. Kay, called on behalf of the City of Lima, being first duly sworn, testified as follows:

Examined by Mr. Light:

Q. Your name and address, please?
A. Howard L. Kay, K-a-y.
Q. What is your business or profession?
A. Public accountant.
Q. You live in Lima?
A. Yes, sir.
Q. How long have you been a public accountant?
A. Seventeen, eighteen years.

Q. I will ask you, Mr. Kay, whether or not in the year 1927 you were employed by the City of Lima to make an examination of the books of account of The West Ohio Gas Company?

A. Yes, sir.

Q. And did you make such an examination?

A. I did.

Q. And did you tabulate the result of your examination?

A. Yes.

Q. I will ask you from the examination of the books of the [fol. 346] company, Mr. Kay, whether or not you examined balance sheets showing the fixed assets of the property of the company?

A. Yes, sir.

Q. And did you, Mr. Kay, at my suggestion prepare a tabulated statement of the valuation of the two plants at Lima which is now consolidated into The West Ohio Gas Company showing that valuation as of January 1st, 1921?

Mr. Bentley: You mean the book value now?

Q. Yes, the book value of the fixed assets and bringing that valuation on up to September 30th, 1927; did you prepare such a tabulation?

A. Yes.

Q. Will you look at City's exhibit number 11, Mr. Kay, and tell the Commission whether or not that is the statement to which I refer that you prepared?

A. Yes, sir.

Q. What would you say as to that being a correct statement showing the fixed assets of the company as of the dates used in the exhibits as shown by their books?

A. They were taken from their books and balance sheets.

Q. You examined the books of the Lima Natural Gas Company and the books of the Lima Gas Light Company, did you?

A. Prior to this time?

Q. Yes?

A. Yes, sir.

Q. Those books come up to a date of December 1st, 1924, is that correct?

A. Yes, the separate corporations, I believe.

Q. Well, about that time is when the consolidation occurred and they all became, with the companies down at

Cridersville, "Wapac" and Celina, all became The West Ohio Gas Company?

A. Yes, sir.

[fol. 347] Q. Refreshing your memory, Mr. Kay, from the report which you prepared, tell the Commission what the cost of manufacture of water or blue gas was for the year 1925?

Mr. Hebel: Pardon me, what page are you referring to?

Mr. Light: 31, for the year 1925.

The Witness: 25.4 cents per thousand cubic feet.

Q. And what was the cost for the year 1926?

A. 20.3 cents per thousand cubic feet.

Q. And what was the cost in 1927 covering the period of the first nine months of the year?

A. 22.25 cents per thousand cubic feet.

Q. In your examination of the books of the company, Mr. Kay, did you find any history or record of the property which we have referred to here as the transmission line?

A. In 1922, I don't remember what time of the year, the city had a case here before on a rate matter. I was engaged at that time and I made a hasty investigation covering the business from 1901 to 1921, in all of the years by five year periods, made balance sheets and earning statements, and on my balance sheet taken from their records December 31st, 1912, under the head of Assets, Plant——

Q. That is one item, Plant?

A. Line bought from Northern Indiana Gas & Electric Company, 1910.

Q. You find that——

A. That notation was made to explain the difference, increase in the amount of Plant expenditures from the previous balance sheet of 1907.

Q. And that was taken, Mr. Kay, from their books?

A. I referred to that in my report in 1927.

Q. Well, was that entry or notation made from the books of the Lima Natural Gas Company?

A. From the books and inquiry in the office there, Mr. [fol. 348] Pringle.

Q. Mr. who?

A. Mr. Pringle was in charge and furnished me what information I asked for.

Mr. Light: That is all. I would like before I finish to offer City's exhibit 11 as part of the direct examination.

And thereupon the exhibit above offered was introduced and admitted in evidence on behalf of the City of Lima, and is herewith submitted, marked City's exhibit 11.

Chairman Geiger: Well, did that notation that you made from the books and examination of the books indicate how much they paid for the purchase of that transmission line?

The Witness: Not at that time. In my report of the last examination, 1927, I made the computations on it and my memorandum at that time, my last report shows that in 1908 or after the close of 1908 they charged off an old transmission line from Granville field where they had been obtaining their gas, $85,906.02 and they added $234,788.89, which I state is the cost of the transmission line purchased from The Northern Indiana Gas & Electric Company.

Commissioner Klinger: Where did that line go from and to?

The Witness: This statement says "Represented by 44 miles of ten and twelve inch transmission line from Wyandot County to Lima."

Chairman Geiger: Where did you get that statement?

The Witness: That is the statement made in my report.

Commissioner Klinger: Well, now, where did you get the information?

[fol. 349] The Witness: From the records and information received in their gas company office.

Commissioner Klinger: Now can you tell us in your judgment from an examination of the books that this figure of $234,788.89 represents the amount they paid for the 44 miles of ten and twelve inch pipes from Wyandot County to Lima, is that correct?

The Witness: I couldn't say that at this time.

Commissioner Klinger: Well, then, what is it? You have stated it once that way, haven't you?

The Witness: I didn't see the vouchers for it. I found the entry of the increase, the increase in the assets from 1907 to 1912 accounted for a certain amount of money, increase. I took the amount of the fixed property on the balance sheet of 1907, deducted the line that was abandoned from Granville, added the item of the new transmission line and gave me the fixed assets as of December 31st, 1912, including the other fixed property.

Commissioner Klinger: Well, what do you mean when you say you took the new transmission line, what do you mean by that?

The Witness: Well, the one that they substituted for the line abandoned into the Wyandot field.

Commissioner Klinger: I know, but is that what they paid for it or——

The Witness: Yes, sir.

Commissioner Klinger: That is what the Judge asked you.

Chairman Geiger: I asked you if that is what the record showed they paid for it and you said you can't say.

The Witness: I say I didn't—I was only given a few days, probably a week in that 1921 investigation to look [fol. 350] up that matter and that was the information I got from the books and the information given me in the office.

Mr. Light: As I understand, what the witness wants to say, that he didn't get to check the vouchers as to what was said.

Commissioner Klinger: That is what the books show?

The Witness: Yes, sir.

Chairman Geiger: That is what you understand to be the amount paid for the new Lima-Wyandot County transmission line?

The Witness: Yes, sir, that was my information.

Chairman Geiger: Did you look for resolutions of the Board of Directors to see whether they authorized the payment of the fixed price?

The Witness: No, I did not.

Cross-examination.

By Mr. Bentley:

Q. All these figures included in this report are from the books as you found them at the various times in the last ten years?

A. Yes, sir.

Q. The books indicated that when the Lima Natural Gas Company got the title to this pipe line it had acquired it from another corporation?

A. Yes, sir.

Q. Did you know or was there anything in the files or records to indicate to you that that in fact was a holding

company, a subsidiary company, which had been organized solely and only for the purpose of building this pipe line?

A. No, sir.

[fol. 351] Q. And which eventually, about 1910, was taken over in the name of the company itself and the holding company discontinued?

A. No, sir.

Mr. Bentley: Subsidiary company discontinued. I think that is all.

Mr. Light: That is all. We rest.

And thereupon the City of Lima rested.

[fol. 352] And also—

EMMET R. CURTIN, recalled on behalf of The West Ohio Gas Company, being heretofore duly sworn, continued his testimony as follows:

Examined by Mr. Bentley:

Q. Mr. Curtin, you heard the testimony of Mr. Kay on the stand just now?

A. Yes, sir.

Q. And there was a reference in that examination to some company which had apparently built this pipe line that has been discussed?

A. Yes, sir.

Q. Will you tell the Commission what the facts are about that transaction?

A. Well, there was a company known as the Indiana Pipe Line Company and they built these lines, that is, the same people that was in the Lima Natural Gas Company built the lines. In fact, I was the superintendent of the company. And after this line was built and we operated it for some time, through our attorney, Mr. Wheeler at that time, we realized that we were in the pipe line business and we wanted to get out of the pipe line business and we sold this company—this line to the Lima Natural Gas Company.

Q. Well, if I understand you, this corporation was subsidiary to the Lima Gas Company?

A. Absolutely.

Q. Belonged to it?

A. Yes, sir.

Q. Same people?

A. Yes, sir.

Q. And eventually you took it over. Are you able to tell when this pipe line was built first?

A. Which pipe line?

Q. Well, the pipe line that we now call the transmission [fol. 353] line?

A. About 1907.

Q. I wish you would tell the Commission what you know about this transaction which has been discussed here yesterday and the day before perhaps as to the construction of this pipe line and the claim made in this hearing that it was second-hand pipe line when it was put into the place where it is now located; tell the Commission the facts about the entire transaction?

A. All right; it was brand new pipe. We bought this pipe and laid it over into Indiana in 1903, as near as I can remember.

Commissioner Klinger: When?

The Witness: In 1903. That Indiana field played out. We took that pipe up. That was the first pipe laid from St. Marys. We originally had a line from St. Marys that used to extend down in the Mercer County field. We laid the line from St. Marys. This 45 miles of line was laid from Lima to Kenton. Now some of the pipe in the Indiana field was laid from Kenton down to Sugar Grove field. Now afterwards in the operation of the business the Sugar Grove field played out. That pipe was disposed of and we laid 15 miles more new pipe east of the end of the line at Kenton to join the line that was owned by the Medina Gas Company at that time. That is the 15 miles of pipe that you—that was about four years, four or five years afterwards. Now this Medina line started from the end of our 44 miles and goes way down into Holmes County perhaps about 150 miles from the end of that line.

Chairman Geiger: I understood you to say that you had originally the pipe laid to Kenton 44 miles; that wasn't correct, was it?

[fol. 354] The Witness: No, that is the—the 44 mile line is from Lima to the end of our line, is 44 miles, but it is 30 miles to Kenton.

Chairman Geiger: 30 miles of it is built with new pipe and the remainder of it was built from some pipe that had formerly been used in Indiana?

The Witness: No, sir, that is the line that went down to Sugar Grove, that was the same kind of pipe, but that was afterwards disposed of, but the line, the 15 miles was brand new ten inch screw pipe, wrought iron screw pipe.

Commissioner Klinger: That is from Kenton to the——

The Witness: To the Wyandot County line.

Q. And the 30 miles from Kenton to Lima, when that pipe was bought by the gas company was it new or old?

A. New pipe.

Q. And what kind of material is it?

A. Well, it is wrought iron pipe. That is where this Matheson joint came in. Now at the time the Matheson joint—the Matheson joint was made before they knew anything about steel pipe and it was considered the best pipe on the market. Now they made the Matheson pipe with the idea of taking the place of cast iron pipe. It was virtually made with a bell joint and spigot and supposed to have a lead gasket in, put in, but in place of putting the lead gasket in we put in rubbers, that is, we got a collar clamp, had a rubber made to go in in place of the lead and put on the collar clamp to draw it up. Now at the time that pipe was made—the statement was made yesterday it was eighteen foot joints. At that time why there was no regularity on the size of pipe, might be seventeen feet, might be eighteen, might be twenty-two feet, just as it [fol. 355] come from the mills. They would square it out. Now today you can buy pipe sixty feet long, which you couldn't buy it them days.

Q. Have you had any personal experience in gas and oil fields?

A. Why I have s-ent all my life in it.

Q. I mean the physical end of the work, about laying pipes?

A. Why, I carried a dinner pail twenty-two years.

* * * * * * *

[fol. 356] Q. As a part of your system in Lima you have a manufacturing plant?

A. Yes, sir.

Q. What do you say to this Commission is the condition of that plant as to efficiency and fitness for the purpose for which it is being used?

A. A hundred percent.

Chairman Geiger: Right there, what does that include? Does that include all your storage tanks and all your equipment for the manufacture of water gas that you are speaking of as being a hundred percent?

The Witness: Everything that we use for to manufacture gas for this property in Lima.

Chairman Geiger: Now how long have those gas retorts been used?

The Witness: Well, they have been used, one set of them possibly ten years and the other is—no, one, the largest one, I should say five or six years. We have got a witness here that will give you the exact dates on it.

Chairman Geiger: Well, you don't have any of the old [fol. 357] retorts that were used prior to the use of natural gas?

The Witness: No, sir, we haven't got a single thing, Judge, except one underground tank up there, that was the first tank the company had. We only use it for a tire container now. There isn't a gate valve, there isn't anything that was originally when that plant was built, as Mr. Pringle told you on the stand here. I was also on the job at the building of that, the boss of the building of the works.

Commissioner Bricker: How many subscribers would your plant as it is now constructed in Lima accommodate?

The Witness: Well, probably half as many more by pushing the—half as many more as we have got. That don't mean that it is over-capacity, by having—I run that plant—gentlemen, I will say I am all wrought up at this proposition. I have been thirty-five years on that gas business. I know it from A to Z. I know it better than any engineer that has went on that property because I know not only what is on top of the ground, but I know under it. I don't want to appear here just to shoot off and do a lot of talking, but I challenge you or anybody to ask me anything outside of the accounting of that company that I can't answer.

Q. Well, I will ask you this question, Mr. Curtin, going to just what you have said. You say that the plant will

accommodate perhaps a half more customers than you have right now today?

A. If we were to crowd it.

Q. It is necessary in a plant of that kind, of course, isn't it, to keep a certain part of reserve machinery all the time idle?

A. Absolutely.

[fol. 358] Q. What is your equipment down there and how is that apportioned, how do you use it?

A. Well, we have three sets down there, two six foot six sets and one nine foot—no, one eight foot six and one nine foot six. Now you know you can only go a short time in one of these sets, that the coke and the coal, it clinkers, and has to be cleaned just like any furnace. Now we use two, the two small ones, for a week or ten days, whatever the operation may be, then we rest them up and we use the nine foot six set. We do that. Now if anything would go wrong—and sometimes we start in a run and the fire goes bad and we have to change over to another set, sometimes we get pretty close to the cushion on it; if it wasn't for our million foot holder we would, because from the time we find this set is going bad on us we have to start to get the fires going in the other one, because it takes anywheres from twelve hours or longer to get the brick work and everything heated up.

Q. Well, that is, in an efficient, careful operation you have to keep one set idle waiting?

A. Yes, sir.

Q. Available for emergencies, don't you?

A. Yes. Of course, now, you understand when these sets were built down there that they were built for the probable output in Lima at the time they were built. Now right today we have got a contract and we are installing ovens and the Lima Locomotive Company will take a million and a half feet of gas a day. Now if they get all that we will have to put in another set.

Q. I was just about to ask you, that you are making a drive for industrial consumers?

A. Absolutely, yes.

[fol. 359] Q. That is one to whom you have just referred?

A. That is the reason our sales increased some and will increase even if the number of consumers decreases. I can take care of that when it comes.

Chairman Geiger: What are you charging the Lima Locomotive Works per thousand?

The Witness: We charge them the same rate that we are charging now, and we will get now sixty cents or sixty-five cents at the high price, we will get up in billions—hundreds of thousands of feet, but the first rate we have now, the only rate we have got at the present time is the present rate.

Chairman Geiger: What is it, fifty-five cents?

The Witness: No, the present rate here is $1.25 the first 400 feet, $1.05 for the next 2600 and so on. Now they will have to take that to start with and after they get beyond the 25,000 feet then take the amount of gas that we step down.

Chairman Geiger: What will you step down to 65 or 55?

The Witness: 65.

Chairman Geiger: That is the lowest price they can get no matter how many million feet they use?

The Witness: Yes, sir.

Q. That is the schedule rate, isn't it?

A. Yes, sir, and there probably will be, maybe a demand charge added to that.

Q. Now there has been some discussion here about the B. t. u. content of the gas that you are delivering now in the city of Lima, I wish you would go into that subject, Mr. Curtin, as far as you are familiar with it?

A. Well, now, I have heard a lot about this proposition in Lima.

[fol. 360] Q. In the first place, let me ask this, there is no ordinance provision in Lima or franchise provision in Lima requiring any certain B. t. u. content?

A. No, sir.

Mr. Light: We admit that. There was for natural gas.

Mr. Bentley: That was part of——

Mr. Light: No, 950 B. t. u.

The Witness: No, no. They tried to get that into an ordinance here last year but we didn't accept it. That was the ordinance that was passed at the time that we came to the Commission in the last hearing on the rate we have got now.

(Previous question read as follows: "Now there has been some discussion here about the B. t. u. content of the

gas that you are delivering now in the city of Lima, I wish you would go into that subject, Mr. Curtin, as far as you are familiar with it?")

A. Well, there was an artificial gas plant, one of the first in this country, built at Lima; that served the people until about thirty-seven or thirty-eight years ago. About thirty-seven years ago they discovered natural gas south of Lima. Some parties that were interested in an old artificial plant went out and brought gas to Lima. And now this old artificial proposition only covers just a small circumference in Lima, just the business part of the town that you can imagine that Lima was some forty years ago. Well, after they got natural gas, they brought natural gas, they served it for heating purposes, just the same things that they did with the artificial, except a lot of people were under the impression that you could get better light from artificial gas than [fol. 361] you could from natural. Well, I think that was right at that time, because them days the natural gas was very highly charged with sulphur, and you have these open tips, they didn't know anything about any burner of any kind, except an open tip and that used to burn and for many years the gas company were able to sell considerable gas for lighting purposes and we had a street contract, that is the Wellsbaugh Company had it and we served it under the Wellsbaugh, for street lighting, before they ever had electricity, and for years after they had electricity. Well, as the circle goes around then, about thirty-seven years ago a bunch of friends of mine and myself, I was the youngest of the whole bunch of them, we—I say "we," I only owned a small interest at that time—we bought the old Brice and Baxter interest up, bought this gas up and we started in. We served gas from part of St. Mary's field, then we had to move down to what was called the Pambier field, that is, in Darke County south of Celina. These fields all lasted about five or six years, somewhere along there, then we had to go over to Indiana. Then we had to come back and go to Sugar Grove and then to this Medina field.

Chairman Geiger: Now just one moment there, it is very interesting, but I want to know as you go along, you went to Indiana and got gas from Indiana, piping it to Lima?

The Witness: Yes.

Chairman Geiger: Are those pipes still in the ground?

The Witness: Oh, no, they are—all the wells are pulled out years ago, and the lines are——

Chairman Geiger: I mean the transmission lines?

The Witness: Transmission lines, part of them are used [fol. 362] down here in the Licking County field. Well, this came along here until about 1912. Now up to 1914 I was—my business was in the main line business, the distribution of the gas, getting it from the wells, and laying the pipe line and all that different work that goes with that. But we sold this—after we had moved up here to Medina field we sold it to the H. L. Doherty Company, that is the pipe line interests, and the first year after Doherty got it I went in as—in the distribution end of the business. And, of course, we were getting gas from the Doherty Company and the gas began to fail. It failed to a point that in place of having—we were the first people in Ohio that made a step-up rate in order to cut off the consumption and furnaces and industry and everything, we started in a certain price and every few thousand feet we stepped it up, we couldn't furnish the gas. Now at that time——

Chairman Geiger: You mean a step-up, the larger volume they consumed the more they paid?

The Witness: The more they paid.

Chairman Geiger: Per thousand feet?

The Witness: Yes. We discredited it and that came in the war period and, of course, the Commission was with us, and it was a very easy matter to get away with that, but we discovered that they were getting—that we couldn't never maintain the gas pressure at Lima or the quantities of gas. Then is when we built this plant down here because we felt that we were facing a bad proposition.

Chairman Geiger: When did you built it, 1912, 1914?

The Witness: Yes, from 1912, along there, '14.

[fol. 363] Mr. Light: What was built in 1912?

The Witness: It is built since I came here.

Mr. Light: What was built?

The Witness: Well, part of the plant. We had a couple of—we had two boilers, we had two generators and we had some of the buildings, but since that time this other equipment has been put in. Well, we found out we couldn't—at that time we had the two systems there and we were furnishing gas, of course, to some people who were getting gas artificial, it was strictly artificial, that is, blue gas,

which was enriched by oil; and we were furnishing natural gas. It came to a time in one of these years that we didn't have enough gas on the first of January to light the gas. Then we used to have through the system where they were both about in the same circle, they would have the artificial gas and the natural gas in and some—they would have it tied together with a three-way cock with the idea that if the natural gas, there wasn't enough of it, they would switch it over to the artificial, but that wouldn't work because the two gases wouldn't work in the same equipment, it was impossible to do it. But anyway, we felt we were up against it, we couldn't get any more gas and we were depending on somebody else to sell it and nobody wanted to lay lines up to us and that is the reason we went on to complete the plant. Then we decided to go to a manufactured gas. Now manufactured gas isn't any more than just artificial gas. Just years and years and years before we began to call it artificial gas. Why do they call it artificial gas? Because it is manufactured. In artificial [fol. 364] gas, you can have artificial gas from a coal oven or you can put anything in the blue gas, you can put crude oil or you could put, of course, gas oil. There was a day when we used to get fine gas oil, but you can't get it because the refiners all crack it out, the gas oil you get is something like vaseline. But anyway, we felt that we could make a mixture of the blue gas and the natural gas and we felt that we could give a better quality of gas in Lima by using the natural gas for an enricher. Now all the gas writers in the country are getting away from artificial gas, they are getting away from calling it artificial gas. They call it manufactured gas, because it is a manufactured product. It isn't any different because it has got natural gas in it, and the only reason we use natural gas is because we are able to give a better quality of gas than we could if we were furnishing straight, what they would call artificial gas, because if we used anything else then we have to use oil and we couldn't get it unless we would make a mixture of gasoline and the oil that they sell you for gas oil, which we have had to do, didn't have to do it this year, but here last year there was for two weeks that we didn't have enough gas to supply St. Marys, Celina and "Wapac" let alone Lima, two weeks we didn't have any gas in Lima, so we had to be prepared all the time to have

a quantity of oil at our works that we could go on in a short notice there, but we always have to get tanks of gasoline to mix with it because we can't use it up. Well, we did start out to furnish a B. t. u. gas to Lima at 650. We started in the summer time and it came along in the winter, about January, and we found out we couldn't maintain [fol. 365] it because they couldn't furnish us enough natural gas for just the mixture in this proportion. That was under the Doherty administration of this furnishing us the gas. Well, now, when we found out we couldn't maintain it we didn't want to give the people a 650 B. t. u. gas one time and then get down maybe to 500 or 550, because the equipment you use now-a-days is so finely adjusted. We have got seven or eight thousand new stoves to put in Lima. Two or three years ago if they were out of gas they could get an old cook stove and throw in a chunk of wood or coal and get away with it; couldn't do it now. The equipment now, except very few, is the finest kind of equipment. It is finely adjusted. Even these little stoves you have in the—what is the name of them?—Radiant fires, the equipment or the adjustment is so fine in it that you don't need a calorimeter. If there is fifty degrees in the change of the B. t. u. anybody that knows—out to my house a mile from the works I could tell it right there without having a calorimeter. Now we have come down and we have made a standard of 550 B. t. u. gas. It won't work. We do try to carry 560, but it is impossible to do it altogether, and there is a chart of what—we have a lot of these charts here.

Q. How do you keep a record of B. t. u. content of the gas; where is it measured?

A. We have a calorimeter in Lima. What is the name of that calorimeter? Thomas Calorimeter, electric calorimeter that every three months we have a service on it from these people.

Q. Is the record kept continuously at the plant?

A. Why there is thirty feet of records.

[fol. 366] Q. Of course, but I am asking you the question is it kept continuously?

A. Yes, sir.

Q. And how is it kept, recorded on what?

A. There is mechanism, that roll is put in there without a mark on it and there is a pen on it that works down; that

turns up and it keeps working up, it starts from the bottom and works up.

And thereupon a paper writing was marked for the purpose of identification as Company's Exhibit A.

Q. And this roll that you have here which is marked Company's exhibit A, this is a roll of the kind of which you are speaking, isn't it, Mr. Curtin?

A. Yes, sir.

Q. And the red line which appears along the edge—

A. Those are the B.t.u.

Q. And they indicate at what intervals?

A. I think that is every ten minutes.

And thereupon two photographs were marked for the purpose of identification as Company's exhibits B and C.

Q. Now, Mr. Curtin, you have other cities in your system of the West Ohio Gas Company other than Lima, don't you?

A. Yes, sir.

Q. Other distributing plants?

A. Yes, sir.

Q. The West Ohio Gas Company has no gas production of its own, has it?

A. No, sir.

Q. Has no connection by ownership or otherwise with [fol. 367] any gas producing company, has it?

A. No, sir.

Q. Has it any interest, direct or indirect, in any gas fields whatever?

A. No, sir, not since the Indiana field—no, pardon me, Indiana and down here at Licking County.

Q. Granville?

A. Well, yes.

Q. Sugar Grove. Then you depend for your natural gas supply upon the open market?

A. Yes, sir.

Q. Now, I wish you would tell the Commission what the conditions were and what they are now that caused you to go on a manufactured gas basis at Lima and continue the natural gas service for the time being in the other towns?

A. Well, they can't maintain a natural gas service at Lima. We would be tickled to death today, we would be tickled to do it——

Q. Now tell the Commission what effort you have made and have to make every time you get a gas supply?

A. Well, there is only two systems in Ohio now. Everybody knows that. It is common knowledge. East Ohio Gas Company and Columbia Gas & Electric Company, through these different companies' subsid*er*aries, as the Ohio Fuel Company and the Logan and these different companies. There was three when Doherty was in, when the Cities Service was in, but they are eliminated.

Chairman Geiger: But are any of those so close to your transmission line that goes over to Wyandot County that it could be attached to your transmission line?

The Witness: Yes, sir, they go right across our line up here near Harpster, some distance east of where our line comes, the Toledo line, and the line that goes up to some of them other places, there is two lines that cross our [fol. 368] line up here, but east of where our line starts. In fact, they own it. Now they own—except our line, they own this old Doherty property that goes down into Holmes County, and they own the lines that go north to Toledo and up to Sandusky and these other places.

Chairman Geiger: Well, then, why is it, Mr. Curtin, that you are obliged to pay a fifty-five cent rate for natural gas delivered at Lima when other cities are getting it for less from these same companies?

The Witness: Well, Judge, I would like to know that, I would like to know. The only thing I know that they won't sell gas to us any less than the price that we are getting that gas for.

Chairman Geiger: Do you know at what rate they are selling it to Toledo, for instance?

The Witness: To Toledo?

Chairman Geiger: Yes.

The Witness: Well, I don't know now. I did know that last year or year before they sold it for seventeen cents a thousand at Toledo.

Chairman Geiger: And they have to cross your line to get to Toledo?

The Witness: Yes, sir. I don't know what they are selling it at now, but I understand when I took it up here this

year that any contracts that they were making to outside people started at fifty-one cents a thousand and would go up, and they make five year contracts with them and go up a cent a thousand for the five years.

Chairman Geiger: Well, you don't mean to say it yet, but [fol. 369] do you think that they discriminate against you because your company is held and owned finally by the Insull people of Chicago and their people to whom they are furnishing gas, the common stock in the local company is held by themselves?

The Witness: Held by——

Chairman Geiger: By The Ohio Fuel Gas Company and the Logan Company?

The Witness: The common stock of the Insull Company's?

Chairman Geiger: No, no, the Toledo Company.

The Witness: Why, they own the Toledo Company, they own the Findlay and they own the Toledo, they own all these companies outside——

Chairman Geiger: That is what I am trying to get at. Do you think they furnish gas to the companies that they own, the distribution plants at these various cities, at a less rate than they furnish it to you?

The Witness: I imagine so.

Chairman Geiger: You said they furnished it at seventeen cents at Toledo?

The Witness: Well, they must sell it at some price that they can sell gas at some of these towns for fifty cents or they can sell it to them at a price that is less than we pay them for it.

Chairman Geiger: What we are trying to get at is this, there are certain cities that they are obliged to pay fifty cents a thousand and increase it one cent a year up to fifty-five cents a thousand?

The Witness: Yes, sir.

[fol. 370] Chairman Geiger: And you are one of those?

The Witness: Yes, sir.

Chairman Geiger: Now were all those other cities that are in your class and obliged to do that cities that are not owned in their distribution plant by the Ohio Fuel Gas or the Logan Gas?

The Witness: Yes, sir.

Commissioner Bricker: What is the rate in Toledo, do you know, Mr. Curtin?

The Witness: I don't know now. They had a seventy-five cent service charge, and I think the first was fifty-five cents and it stepped up.

Q. I will ask you this, Mr. Curtin, and I don't want to be leading, but it is probably the shortest way. Do you know of any place which these supply companies are selling gas to any other distributing company except you?

A. Do I know of any other?

Q. Yes, or isn't it a fact that they distribute this gas in their own subsidiary plants in these different towns?

A. Yes, I don't know any gas company—well, yes, I think—I am not sure, I won't say.

Q. And the fact is a few years ago they tried to refuse to give you any gas at all?

A. They did so, and if it hadn't been for the Commission here they would have done it.

Q. And they shut us off in Lima and we came down and this Commission compelled them to reinstate the service?

A. Yes.

Q. And isn't it true that every time you have to renew a gas contract with them you have the same old trouble and the question of increased price?

A. Why, we are fighting all the time to keep that price [fol. 371] down, because nothing would suit me better, if we could go up there to Lima and cut that price down to fifteen cents a thousand. Wouldn't it be better to furnish gas at that price than it is the present price?

Chairman Geiger: Do you buy your own natural gas from the same producing company that Toledo and these other places buy theirs?

The Witness: No; we buy it from the same company but we don't buy it out of the same line. We don't know anything about their lines. All we know is that we are attached on a line that goes down 150 miles down in the southeastern part of Ohio. Now we don't know how they get that.

Chairman Geiger: Let's get this thing straight. Does your gas come up from those producing wells 150 miles away in the same main pipe that the gas that is delivered in Toledo comes?

The Witness: I don't know that, Judge. That is in their——

Chairman Geiger: You don't know whether you are relying upon the same wells?

The Witness: I don't know.

Chairman Geiger: Do you know whether you are buying from the same company?

The Witness: How?

Chairman Geiger: Are you buying from the same company?

The Witness: Yes, from the Ohio Fuel Company.

Chairman Geiger: And they charge you fifty-five cents?

The Witness: At the gates at Lima.

Chairman Geiger: And they charge other places seventeen cents?

[fol. 372] The Witness: Well, they used to charge—up at Toledo I know at one time—but say, that is an easy matter. You have got a record here.

By Mr. Bentley:

Q. Now in this last contract which you made, which I think is the first of this year, wasn't it?

A. Yes.

Q. The best price you could get was what? When you made your last contract, what was the best price you could get?

A. We started in to make this contract six months before the old contract was out. Now the old contract was with the Doherty Cities Service Company and, of course, when they took over the Cities Service Company they took over that contract and we were never able to get that contract and no satisfactory explanation of the situation until six months after it run out.

Q. And what price was the best you could get?

A. Fifty-five cents a thousand.

Q. And they furnished it through your own line?

A. Through our own line.

Chairman Geiger: May I be permitted there, they furnish it at the gateway of Lima through your own line which is forty-five miles of transportation line?

The Witness: Yes, sir.

Chairman Geiger: Now what would be the price or is

there any way of ascertaining the price that they would have charged you had they been furnishing that line themselves?

The Witness: Well now, Judge, I couldn't—I don't know.

Chairman Geiger: Well, you see that appears to enter into the question in this way, you want us to give you a [fol. 373] price based upon a fifty-five cent gas that you have to buy, but you buy it at the end of forty-five miles of transportation through your own pipe?

The Witness: Yes, sir.

Chairman Geiger: You want us also to consider the value of your own pipe?

The Witness: Why, sure.

Chairman Geiger: Well, aren't you considering the value of it twice then in considering the rate that you get it at Lima after it has been transported through your own pipe line? Now that is the benefit that you get from your own pipe line that you get a fifty-five cent rate which they might have charged you more if they had to put their own pipe line? In other words, the price as I am trying to get at it, the price that they furnish the gas at Lima is after you have charged them theoretically a rental price for your forty-five miles of pipe line?

The Witness: Yes, but we don't get any rental. In other words, it would cost us more than ten cents a thousand more if it wasn't for the consideration of that pipe line. In fact, they wouldn't——

Chairman Geiger: Then you are getting a rental of ten cents a thousand out of your pipe line?

The Witness: Yes, but we have to use the pipe then. That pipe line is just the same as it might be so many miles of distribution line in Lima.

Chairman Geiger: I know. But if you theoretically are getting a rental of ten cents a thousand for the use of your [fol. 374] pipe line of forty-five miles then you would be obliged to account for that ten cents as an income from that investment. That forty-five miles of pipe line produces for you ten cents a thousand by reason of the fact that you have that much rebate upon your price; isn't that so?

The Witness: Well, that is pretty deep.

Chairman Geiger: It seems to me that is about—if they would have charged you sixty-five cents if they had had

their own pipe line and only charge you fifty-five cents when you are using your pipe line, therefore, you are getting an income from your pipe line of ten cents a thousand feet.

The Witness: Yes, but Judge, if it cost ten cents then we would have to add ten cents more on the rate in Lima.

Chairman Geiger: I know, but you are trying to get credit for it twice.

The Witness: I don't think so.

By Mr. Bentley:

Q. I will ask just one other question; what effort did you make to ascertain whether or not there were any other available sources of supply before you made this last contract?

A. I went to these companies and I have written letters and we have got copies of the letters right here.

Q. Did you find any other source of supply whatever?

A. No.

And thereupon a recess was taken until 1:30 P. M. of same day, Wednesday, April 2nd, 1930.

[fol. 375] Afternoon Session

Wednesday, April 2, 1930.

Stipulation re Production of Gas

Mr. Light: By agreement of the Company and City, it is stipulated that during the year 1925, 177,464,000 cubic feet of water gas was produced and 247,228,451 feet of natural gas purchased. That in the year 1926 there was produced water gas 204,066,000; there was purchased natural gas 244,467,149. During the first nine months of 1927 there was water gas produced 171,415,000 cubic feet; natural gas purchased 171,484,750.

And also—

EMMET R. CURTIN, resuming the stand, continued his testimony as follows:

Cross-examined by Mr. Light:

Q. Mr. Curtin, the Indiana Pipe Line Company was organized under the laws of what state?

A. Well, I couldn't tell you.

Q. The stockholders, or at least some of the stockholders of the Indiana Pipe Line Company were also stockholders of the Lima Gas Company?

A. Yes, sir.

Q. They were not all, I believe?

A. They were all.

Q. About 1903 some lines were laid over in Indiana?

A. Yes, sir, before that time.

Q. And in 1927 the Indiana Pipe Line Company took up some lines over there and using pipe that was collected over there brought it over and built the transmission line [fol. 376] which is in this case?

A. Yes, sir.

Q. Then the Indiana Pipe Line Company sold that transmission line to the Northern Indiana Gas or some kind of a company?

A. I don't know where you get the Northern Indiana.

Q. Well, it is an Indiana Company?

A. I don't have any recollection of such for the reason, as I stated, we got rid of a subsidiary.

Q. Well, you did not sell that direct to the Lima Natural Gas Company?

A. Yes.

Q. Are you sure about that, Mr. Curtin?

A. Well——

Q. Didn't you sell it to an Indiana Company and that company in turn sell it to the Lima Natural Gas Company?

A. Well, now, that might be.

Q. Yes.

A. I am not saying that but there was some transaction in there that I am not familiar about at this time.

Q. You held before your company disposed of it, you operated it for three years?

A. Three or four years.

Chairman Geiger: Now, when you speak of the Lima Gas you mean the West Ohio Gas Company?

Mr. Light: I do not. The record shows that the Lima Natural Gas Company, there were some six companies there on December 1st, 1924?

The Witness: There wasn't any West Ohio Gas Company.

Q. There was no such company. And, of course, when the Indiana Pipe Line Company sold to the Indiana Company you sold at a profit?

A. Done what?

Q. Sold it at a profit.

A. Well, I couldn't say that.

Q. Well, you naturally would.

A. Well, I——

[fol. 377] Q. And when the Indiana Company sold it to the Lima Company they again sold it at a profit?

A. No, I wouldn't say so because it was the same company and it was just a matter of getting rid of a company that would interfere——

Q. Are the records of the Indiana Pipe Line Company available so far as the construction of this transmission line is concerned?

A. I don't think we have got them. That has been so long ago.

Q. You were the president of the company?

A. Not at that time.

Mr. Bentley: You mean the Lima Company?

Mr. Light: No, Indiana Pipe Line Company.

The Witness: I never was president of the Indiana Company.

Q. You were an officer of the company?

A. Well, I wasn't—I was the superintendent of the company at that time, general superintendent.

Q. You say that the pipes which you used were irregular in lengths?

A. Yes, sir.

Q. And that processes of manufacturing pipe has been abandoned and pipe is now made in regular lengths?

A. Well, it is not the same kind of pipe. They are getting it more to a standard. That is, you couldn't—it would have been impossible——

Q. That is, there have been improvements in the manufacture of pipe, of course?

A. Well, only as far as making the standard lengths is all but that don't make any difference whether it is 5 feet or——

Q. I didn't ask whether it made any difference. They [fol. 378] do not manufacture pipe of irregular sizes like you used?

A. No.

Chairman Geiger: May I ask one question right in there, do you find it from your experience in that pipe line that the weak spot in the line was in the rubber gasket connection?

The Witness: Oh, yes, that is always the weak——

Chairman Geiger: Have you ever had to dig up any of the 44 miles of pipe because the pipe itself outside of the connection was destroyed, broken or leaked, or anything else?

The Witness: In this line that we have been talking about this morning we have never taken a joint out of the line.

Chairman Geiger: You put new calking in?

The Witness: We put new rubbers in.

Chairman Geiger: Rubber, what do you call them?

The Witness: Gaskets.

Chairman Geiger: They wear out?

The Witnes: Yes, they will only——

Chairman Geiger: All right.

Q. The Lima Natural Gas Company was organized and started doing business in Lime 37 years ago?

A. About that.

Q. And the Lima Gas Light Company had been doing business there before that?

A. Yes, sir.

Chairman Geiger: Is that the Lima Natural?

Mr. Light: The Lima Natural Gas Company.

Q. How old is the holder tank at your manufacturing plant?

A. May I ask our superintendent?

Mr. Light: Sure.

The Witness: How old is that tank, the big holder?

Mr. Lynch: 1910.

[fol. 379] The Witness: 1910.

Q. It is now 20 years old. Metal exposed to the weather?

A. No, sir, every year or two years we paint it. We are very careful about seeing that it is gone over.

Q. Well, that entire plant there is 100 per cent perfect?

A. I say so, operative.

Chairman Geiger: Now, may I be permitted just a question there; is that one of the plants that is built in a pit filled with water?

The Witness: No, sir, that is the large plant you looked at the other day in the picture. It is collapsed in the picture. As the gas goes in it lifts up there.

Chairman Geiger: It isn't the old style that went down into a pit of water?

The Witness: No, that don't amount to anything.

Q. This manufacturing plant's capacity is 3,000,000 cubic feet of gas per 24 hours?

A. Yes, sir.

* * * * * * *

[fol. 380] Chairman Geiger: Now, let me ask you just one question. Assuming for the purpose of illustration that the B.t.u. of natural gas is 1,000.

The Witness: Yes, sir.

Chairman Geiger: And the B. t. u. of your mixed gas is 500?

The Witness: Yes, sir.

Chairman Geiger: In what proportion would the flow of the mixed gas through the meter be increased in order to perform domestic service of heating, not of lighting?

The Witness: Wouldn't make any difference as far as the running of the meter is concerned.

Chairman Geiger: Oh, I understand that but is the B. t. u. the thing you are after?

The Witness: Yes, sir.

Chairman Geiger: That is what does the heating?

The Witness: Yes, sir.

Chairman Geiger: And if you can get 1,000 B. t. u. with a given amount of natural gas going through the meter [fol. 381] must you flow 2,000 feet of the mixed gas in order to get the same heating capacity?

The Witness: No, sir.

Chairman Geiger: Well, what relation are they?

The Witness: Well, I would say less than one-third.

Chairman Geiger: Less than one-third more?

The Witness: Yes.

Chairman Geiger: Well, how do you figure it?

The Witness: Well, now, this B. t. u. business has been around here for a couple of days, Judge. Of course I think that I understand it but I am not able to do it. Now, I have got a man here and he can tell you. Rod, you tell the Judge, here.

Chairman Geiger: Well, we will get Rod on in a minute.

The Witness: Well, I know, but he may not get on the stand, Judge, and I would like to have you know that.

Mr. Bentley: You tell him what you know about it.

The Witness: It is less than—about one-fourth.

Chairman Geiger: About what?

The Witness: About one-fourth.

Chairman Geiger: More?

The Witness: More, yes, sir.

Chairman Geiger: That is, if a person consumed a thousand cubic feet of natural gas to do a particular service in heating he would have to use 1250 cubic feet of mixed gas to perform the same service?

The Witness: Yes, sir.

Chairman Geiger: Therefore, in getting the service performed he would pay 25 per cent. more because 25 per cent. [fol. 382] more gas has to go through the meter provided the natural gas and the other gas were charged at the same rate, is that right?

The Witness: Yes, sir.

Chairman Geiger: Well, now, there is testimony here that you ran down as low as 250, once 150 B. t. u.'s.

The Witness: Well, that is all bunk, too.

Chairman Geiger: It is all bunk?

Mr. Light: That was in the manufactured portion, Judge Geiger.

The Witness: We will put in evidence here to show that that is all "southwest."

Mr. Light: There has been some evidence to the effect that this water gas before it is mixed with the natural gas has a B. t. u. of 150 up to 250, I think in 1925 it had a B. t. u. of 250 and the next year 150.

Commissioner Bricker: But that wasn't gas that was delivered to the meter?

Mr. Light: No, that was not mixed gas.

Chairman Geiger: Well, assuming the water gas has a B. t. u. content depending on what it is manufactured for, then does the admixture of a given quantity of natural gas with it bring it to a uniform rate of B. t. u. content or is that——

The Witness: It brings it up, Judge, it brings it up higher than it could be produced by any other mixture; there isn't any other mixture can be produced today to bring B. t. u. up to the standard we have in Lima except natural gas.

Chairman Geiger: Well, is 40 per cent. natural gas to 60 per cent. of water gas the most economical point of admixture of those two gases considering the rate you have [fol. 383] to pay for it?

The Witness: Yes, and it isn't all—as I told you this morning, we started out to furnish 650 B. t. u.'s, we tried to get up as near the natural gas as possible but we found after we got started, it came along winter time, we have never had a company in the last ten years that has been able to furnish us in winter sufficient gas to hold that B. t. u. up where we started, consequently we had to drop it down to 550 and we have maintained that for the last three or four years.

Chairman Geiger: All right.

By Mr. Light:

Q. The illustration you used of one-third or one-fourth more with a B. t. u. of 550 would not be true of furnace gas or industrial gas, would it, Mr. Curtin?

A. How?

Q. That would not be true if you used the gas for furnace or industrial purposes?

A. It wouldn't make any difference if you used it to cook an egg or to fire up a boiler.

Q. Can you explain that? ?

A. No, sir. You have all been talking about something today and yesterday that isn't the true facts in the business.

Q. You don't mean you have been doing that?

A. I have been telling what they ask for, I tell them we do it, but when we get down to the explanation of this busi-

ness you get down to how many B. t. u.'s evaporates a pound of water and that is too deep for me to get into. But in the ordinary set-up, in talking about B. t. u. it is just a matter of whether a certain B. t. u. is different or a certain something else.

[fol. 384] Redirect examination.

By Mr. Bentley:

Q. I intended to ask this morning in reference to the natural gas supply and your efforts to get it, whether you had heard the reference here yesterday, perhaps, to some supply of 15 cents per thousand gas; did you hear that announced by somebody?

Mr. Light: I said that with reference to gas in the field.

Q. Exactly. Did you hear that statement?
A. Yes, sir.
Q. Do you know anything about that alleged gas supply?
A. Yes, sir.
Q. Go into it and investigate it yourself?
A. Yes, sir.
Q. Now, tell the Commission what the situation is and the fact is about that, where it is.

A. As far as the Lima Gas Company, we are just in this position; down in the hills of Kentucky I own 7,000 acres of coal and timber land and there is a vein of coal on that land that is 5 feet thick, 4 feet and 3 feet, three veins, but it is down there where it would take millions of dollars to get a railroad into it. Now, we are in Lima and here is a field 150 miles, pretty near 200 miles, figuring the 44 miles, and it would take one and three-quarter million dollars to lay a 10 inch pipe line down there. It would cost from ten to eleven thousand dollars a mile without a right of way or without the compressor stations to get 15 cent gas if it was available there. Now, all the 15 cent gas that I know of in that country is tied up by these companies that I tried to tell you about today, and who could afford to spend a mil-
[fol. 385] lion dollars to lay a line to Lima and sell in Lima a couple of million feet of gas a day?

Q. At least the West Ohio Gas Company couldn't?

A. Why, sure they couldn't and there couldn't anybody else do it.

Mr. Bentley: That is all.

Commissioner Bricker: What field is that, where it is located?

The Witness: This gas field?

Commissioner Bricker: Yes.

The Witness: Well, it is down southwest of Mansfield, Holmes County, where we get the gas from. There is some producers went in there and probably got oil, he has got 180 or 160 acres and has got a gas well.

Commissioner Bricker: Just an independent producer?

The Witness: Yes, and he gets as high price as he can get on it and there has been some priced as high as 15 cents and some lower, but the average price down there is about 15 cents and the purchasing company lays the line to take the gas. They put the compressors on it. He couldn't get it out of the county with the pressure if he had to do it himself.

Q. I will ask you whether or not in this effort to form a contact with some gas producer you took the subject up with the Logan Gas Company.

A. Yes, got some different companies here.

Q. Well, did you take it up with them by letter?

A. Yes, sir.

Q. You have an answer from them?

A. Yes, sir.

Mr. Bentley: Mr. Pringle let me have that letter, will you, from the Logan Gas Company?

[fol. 386] The Witness: Took it up with the Northwestren, too.

Q. I will put it this way, would either one of them sell you any gas whatever?

A. No, sir.

Mr. Light: You don't need the letter, I take it that it is true.

The Witness: Now, the reason we are producing that letter is because that is the line that crosses our line up or near Harpster.

Mr. Light: I don't know as these letters mean anything. The company has already said that the Logan Company and the Ohio Fuel are all the same thing.

Mr. Bentley: Well, that don't mean anything much except to show our good faith in going out and trying to get a supply. It didn't hurt to ask the same concern twice in two different places.

Mr. Light: You knew you were wasting stationery when you wrote it.

The Witness: Sure we did.

Commissioner Bricker: Is this gas produced or sold to you by the same company that is actually distributing gas in Toledo?

The Witness: Well, no, not the same company. Now they have got a subsidiary in Toledo, I understand.

Commissioner Bricker: Well, the company that is selling wholesale to you is distributing gas retail in several cities in Ohio?

The Witness: Well, yes, they have a lot of cities in Ohio. They have two or three hundred, probably, cities.

[fol. 387] Commissioner Bricker: Most of it is through subsidiary companies?

The Witness: Yes, sir.

By Mr. Bentley:

Q. Not all of it?

A. Not all of it.

And thereupon two paper writings were marked for purposes of identification as Company's Exhibits D and E, respectively.

Q. I hand you a paper marked Company's Exhibit D, Mr. Curtin.

A. Yes, sir.

Q. Did you receive that letter?

A. Yes, sir.

Q. From whom?

A. Mr. Krick.

Q. What company is he connected with?

A. He is the vice president of the Logan Gas Company.

Q. This letter marked Company's Exhibit E, did you receive that letter?

A. Yes, sir.

Q. From whom?

A. The president of the East Ohio Gas Company, Mr. Gallagher.

Mr. Bentley: That is all. I would like to offer those as a part of his examination.

And thereupon Company's Exhibits D and E were offered, introduced and admitted in evidence on behalf of the West Ohio Gas Company and are herewith submitted, so marked.

Chairman Geiger: Now, permit me to ask just one question here. Suppose, in response to these letters you have exhibited, you would have had a reply from them that they would furnish you gas at Lima at 20 cents a thousand cubic [fol. 388] feet, just suppose they had.

The Witness: Yes.

Chairman Geiger: What could you have then furnished it to your consumers for and made a lot of money?

The Witness: Well, we would have furnished it to our consumers less the difference between 20 and the price that we are paying for the gas now.

Chairman Geiger: Well, what are you paying for gas now?

The Witness: 55 cents.

Chairman Geiger: That is natural gas?

The Witness: Don't make any difference what it is but whatever the price of natural gas is we would sell it that much cheaper to the people at Lima.

Chairman Geiger: Do you mean to say if you could have got gas from a natural gas company for 20 cents at Lima you would have reduced all your prices 35 cents?

The Witness: Yes, sir.

Chairman Geiger: Well, now, as a matter of fact, you can produce 20 cent water gas and you could furnish gas then to all your consumers for 35 cents less than you do?

The Witness: Yes, sir.

Chairman Geiger: And the fact that you have to mix 40 per cent. of 55 cent gas puts you up not 40 per cent. of the difference of 35 but puts you up 100 per cent. You raise on all of it. Do you see what I mean?

The Witness: Yes, sir.

Chairman Geiger: In other words, if you get your gas and it was all natural gas and you would reduce everything 35 cents because that is the difference between 20 cents and 55 cents and your basic gas, which is water gas costs you [fol. 389] only 20 cents, that is the price we are talking

about, then you only used 40 per cent. of the natural gas at 55 cents, then why shouldn't you reduce your mixture 60 per cent. of 35 cents?

The Witness: Well, Judge, in the first place, you couldn't use the water gas if it wasn't the mixture, we couldn't use it at all.

Chairman Geiger: I know, but we are talking about the price. If it were all 20 cent gas you would furnish it for 35 cents less than you are. The 60 per cent. of it is now 20 cent gas and only 40 per cent. of it is 55 cent gas.

The Witness: We couldn't do that, Judge for this reason——

Chairman Geiger: I am asking you why.

The Witness: Well, in the first place, if we got gas for 25 or 30 cents cheaper and they could give us enough to furnish our people in Lima all the gas we wanted, we wouldn't be monkeying around with a mixture or a manufactured gas proposition.

By Mr. Bentley:

Q. If I understand you, Mr. Curtin, in response to Judge Geiger's question, if you had a sufficient natural gas supply at 20 cents to supply your customers then you could reduce your price by the amount, the difference in that price?

A. Yes, sir.

Q. If you had to use a mixed supply then it would be in proportion to the amount of gas you used in the mix?

A. Yes, sir.

Chairman Geiger: Well, but it isn't.

Mr. Bentley: I am assuming that that is what he meant to say.

[fol. 390] Chairman Geiger: Well, then, if that is so, then under that statement you would reduce the present price of gas 60 per cent. of 35 cents, that would bring you out exactly where you say you are willing to stand if you had gas at 20 cents. 35 cents would be your saving; you save it on 60 per cent. of your gas. According to your statement, as I figure it, you should reduce your gas 21 cents because 60 per cent of it is now 20 cent gas and only 40 per cent. of it is 55 cent gas.

The Witness: Well, I think, Judge, when you get into this case and the evidence that we have put in to show what

goes into the price of this gas that the picture will be just a little different than you have got it.

Commissioner Klinger: Mr. Curtin, may I ask you this question? Have you visited other towns in Ohio that are being served by other companies to see how they are being served and what it costs other communities to get the same kind of service that you are giving Lima?

The Witness: Why, yes, in a general way, Judge.

Commissioner Klinger: Well, now, what did you discover, is it true or not true that the area that is served by your company has to pay much more than other communities quite similarly situated?

The Witness: Yes sir.

Commissioner Klinger: How?

The Witness: Yes, sir.

Commissioner Klinger: Now, have you any explanation to give for it why the people of that community must pay more for gas under similar circumstances?

The Witness: Well, only the same thing that we have [fol. 391] been talking about here. If we could buy this gas for less money we can sell it to our consumers for less money.

Commissioner Klinger: Now, isn't it possible for your company to do what other companies are doing to receive the gas?

The Witness: No, sir. For the same basis we could do it, but we can't—if one of these companies, we will say any town you might mention, say Findlay, Findlay is paying a half less for the gas than we are paying; how can we sell it, if we have got to pay a half more, how can we sell it the same price as Findlay?

Commissioner Klinger: What I am trying to get at, I am not a gas man, I am not familiar with that trade. It just appeals to me that having the monopoly from the community that you would see to it that you served that community as well and as economically as other companies serve other communities similarly situated. Isn't that what you undertake to do when you get the franchise?

The Witness: We do do it but I would like to ask you a question. You live in the same town I do. Why do we pay more for water in Lima than any other town in the state of Ohio?

Commissioner Klinger: Well, I don't know excepting that—in the first place I don't know whether that is correct. I haven't checked it up.

The Witness: Well, I say it is.

Commissioner Klinger: And I haven't investigated it but I assume this is your property, you investigated it; if I was in the water business I would investigate it.

The Witness: I am telling you if we could buy this gas [fol. 392] cheaper we could sell it for less money but we can't—and you are always talking and the contention here is because all the other towns except seventeen towns in Ohio which are artificial towns—and we are the largest of the whole bunch of them except up here at Ashtabula, we are the largest town. Now, you have just got to forget natural gas basis as far as Lima is concerned you have got to forget it altogether because for the last four years we haven't been doing any—we are selling, you can call it manufactured gas, you can call it artificial gas, you can call it anything but natural gas because we don't sell any natural gas in Lima. We only use natural gas for an enricher and if we didn't have natural gas we could use oil. That is the only thing. And you have got to get away from it, as long as we haven't got the volume of gas and can't get the volume and nobody will agree to do it, you know you have in Lima many times that they didn't have gas enough to light. Well, now, is that the reason, because we didn't want the gas? When we don't have any gas to sell the meters don't go round, we don't get any revenue. The expense of the company is just as much.

Commissioner Klinger: I have never had a time when the meters didn't go round. What I am trying to bring out is this, you have that franchise there and don't you think under that you impliedly, if not expressly, agree to see to it that you got it? I haven't investigated the field and neither have the people of Lima. That is the reason you have the franchise, and it is worth millions to you, to see that they get it, but don't you think it is really killing the communities that are discriminated against?

[fol. 393] The Witness: Judge, we haven't got an exclusive franchise in Lima. This big company that you have got can lay a line to Lima today or any other company that has got gas can put a line and if the people in Lima are so interested and they think the Lima Gas Company is rub-

bing it into them so hard then why don't they go out and get another gas company to come there and furnish them gas?

Commissioner Klinger: I don't need to answer that. You know as well as I do, because it is only theoretically possible, practically impossible. You are in the ground and the other won't invest his capital there and take a chance.

The Witness: I will tell you, these big gas companies in Ohio don't want the Insull interest in Ohio, they have just turned heaven and earth over and they are going to put us out of business and they are going to do it as soon as you people let them do it because they have got their eye on that plant as a fine plant up there and the day is going to come when all of these towns are going to be using mixed gas and all they would have to do is just to add a little more to that plant and mix the gas there, send it up to Findlay, sent it down to Sidney and all these towns, but they are not going to buy the Lima Gas Company.

Recross-examination.

By Mr. Light:

Q. Then, Mr. Curtin, it must be true that the customers in Lima are being penalized because Mr. Insull owned the property.

A. No, sir, because if the other boys get in here and you [fol. 394] don't have that you will pay more money than we are asking now. We are on an artificial gas company. You go right over to Delphos and it is $1.50 a thousand, you go over to Van Wert and it is $2.50 a thousand. Mr. Pringle here, we have got a list here of 200 towns all around in Ohio. You take this artificial town here—what is the name of that town—Ashtabula——

Q. Our first 400 feet costs $1.25.

A. Yes, and if it wasn't for that charge we have got in there you would pay more than the price you are paying for the other gas.

Chairman Geiger: Now, referring to your letter of November 6th, 1928, to Mr. Gallagher, president of the East Ohio Gas Company, Cleveland, Ohio, who owns the East Ohio Gas Company, the Columbia interests?

The Witness: The Standard, I understand.

Chairman Geiger: Are they connected with the Logan?

The Witness: Not that I know of.

Chairman Geiger: The Ohio Fuel Supply?

The Witness: I don't think so. I don't know, though.

Chairman Geiger: Well, who do you buy from? Do you know who you buy from?

The Witness: No.

Chairman Geiger: What?

The Witness: No. We buy from the Ohio Fuel Gas Company, that is all. I don't know who the people are but that is the name of the company that renders us bills and we pay them.

By Mr. Light:

Q. Do you have any idea where their office is?

A. Right down here on Front Street, I think.

[fol. 395] Chairman Geiger: Well, now, you have also written to the East Ohio Gas Company and the Logan Company, one and the same group of companies?

The Witness: East Ohio?

Chairman Geiger: Yes.

The Witness: No. The East Ohio and the Ohio Fuel are two separate companies, as I understand. The Ohio Fuel is in the Columbia Gas & Electric set-up.

Commissioner Bricker: So is the Logan.

Chairman Geiger: You would have to have a diagram to find out where this holding is.

The Witness: Yes. I know these men in the companies, I am well acquainted with both of them. I don't know just how I addressed them.

Chairman Geiger: You say this in your letter of November 6th: "Now, we are the owners of a pipe line, one-half of which is 12 inch and one-half 10 inch, which extends 45 miles east of Lima to a point in Marsailles Township, Wyandotte County, Ohio, from which point on down from Mansfield and points further east we connect with an 8 inch line now owned by the Ohio Fuel Gas Company."

The Witness: Well, that is a—it should have been the Cities Service Company.

Chairman Geiger: You say Ohio Fuel Gas Company?

The Witness: Well, I made a mistake.

Chairman Geiger: All right.

The Witness: It is the Cities Service Company.

Commissioner Bricker: Cities Service Company doesn't own that now.

[fol. 396] A. No, they don't but the Ohio Fuel Company—when was that letter written?

Chairman Geiger: November 6th.

The Witness: That is all right, that is all right; the Ohio Fuel Company owned that line at that time. They didn't own it before that and the contract that we had wasn't with the Ohio Fuel Company at that time, it was with the Cities Service bunch.

Chairman Geiger: Well, now, you connect with the line that was then owned by the Ohio Fuel Gas Company, an 8 inch line?

The Witness: Yes, sir.

Chairman Geiger: Is that a supply line for very large territory?

The Witness: Well, it came up from Holmes County up to Mansfield and it supplied half the gas in Mansfield; I think the Logan supplied half of it and the Doherty interests supplied the other half; and going up to Oberlin is a number of towns down through there, up to—I don't know all the towns now.

Chairman Geiger: Well, now, that is an 8 inch gas line?

The Witness: Yes, sir.

Chairman Geiger: And it supplies your 10 and 12 inch line?

The Witness: Yes, sir.

Chairman Geiger: Therefore, I would infer that a 10 and 12 inch gas line is much larger than would be necessary to supply Lima off an 8 inch line.

The Witness: I know, but Judge, when we want——

[fol. 397] Chairman Geiger: Isn't that so?

The Witness: Probably would at this present time.

Chairman Geiger: Well, then, what right have you got, your engineers, to set up the value of a 10 and 12 inch pipe when the 10 and 12 inch pipe is supplied by an 8 inch pipe, when probably a 6 inch pipe would have been large enough to make the connection over to supply the gas that is consumed in Lima?

The Witness: It wouldn't because the further you go the larger the pipe you have got have.

Chairman Geiger: You mean further, at the far end?

The Witness: Yes, sir.

Chairman Geiger: At the end where you discharge the gas?

The Witness: Yes, sir.

Chairman Geiger: Do you mean that an 8 inch pipe should feed into a 10 or 12 inch pipe?

The Witness: Why, Judge, it costs more to put an 8 inch line in the place of that line we have got there now, put in a new line, take that up.

Chairman Geiger: I know, but if you were going to replace that line you wouldn't replace it with a 10 or 12 inch line at all, you would replace it with an 8 inch line or less?

The Witness: Well, if you want to look at it that way, all right.

Chairman Geiger: Well, now, isn't that so, because you are supplied with an 8 inch line, you only carry what goes to Lima and not what goes to the other towns.

The Witness: I think it is a 10 inch line in the place of 8 inch.

[fol. 398] Chairman Geiger: You say 10 and 12 here.

The Witness: That is just a——

Chairman Geiger: All right.

By Mr. Light:

Q. Just a minute, Mr. Curtin. To what point does your 44 mile line reach east of Lima, near what village?

A. Well, near Harpster, west of Harpster.

Q. Harpster is east of the transmission lines of the Ohio Fuel lines running to Toledo?

A. Yes, some place there.

Q. And there are two transmission lines running to Toledo which you cross with your 44 mile line?

A. No, they cross the line of the——

Q. Well, they cross one another, then?

A. Well, they cross, yes. That is about 6 or 7 miles east of the end of our line.

Mr. Light: I would just like, in connection with the examination, to ask Mr. Heyser one question if I may.

Mr. Heyser: Yes, sir.

Mr. Light: What is the size of the line with which you connect at the east end of your 44 mile transmission?

The Witness: I know now, after second thought. It is a 10 inch line.

By Mr. Light:

Q. It is a 10 inch line?
A. Yes, it is a 10 inch line.

[fol. 399] And also—

RODNEY LYNCH, called on behalf of the Applicants, the West Ohio Gas Company, being first duly sworn, testified as follows:

Examined by Mr. Bentley:

Q. Your name is Rodney Lynch?
A. Yes.
Q. Where do you live?
A. Lima.
Q. How long have you lived there?
A. About 40 years.
Q. What position have you with the West Ohio Gas Company?
A. General superintendent.
Q. What if anything have you to do with the manufacturing plant?
A. Everything.
Q. Do you have charge of it?
A. Yes, sir.
Q. Operate it?
A. Yes, sir.
Q. How is the B. t. u. content of your product—how do you keep track of it; how is it measured?
A. By a recording calorimeter.
Q. And upon what is that record kept?
A. That is a chart from the calorimeter.
Q. That is, it is kept upon a chart is it?
A. Yes.
Q. Company's Exhibit A, is that one of the charts?
A. That is.
Q. Exhibits B and C, I hand you, what are they?
A. They are true photographs of the apparatus in question installed at our plant.
Q. And what make is that?
A. Butler-Hammer.
Q. What do you call it?

A. A recording calorimeter.

Q. And it records what?

A. The heat units.

[fol. 400] Q. How often is that record made?

A. Continuous.

Q. You mean during the day or day and night?

A. 24 hours every day, every month, every year.

Q. And that roll of paper that is Exhibit A, that represents the record of how long a time?

A. Well I would say thirty days; but each 24 hours is dated to identify the day and the month.

Q. And did you bring more of those rolls with you?

A. I got an arm-load over there, yes.

Q. How many have you, approximately?

A. I imagine fifteen or twenty.

Q. And over what period do they extend?

A. Well I didn't know just what was wanted so I brought some of different periods haphazardly.

Q. What period?

A. I think there is one in 1927, a half dozen in 1928, three or four 1929 and two in '30.

Q. And what B. t. u. content do you undertake at this time to keep in your product?

A. 550.

Q. Is it mechanically possible to keep that absolutely 550 all the time?

A. No.

Q. Explain to the Commission what the difficulties are, if any.

A. There isn't really a difficulty involved, it is only a matter of the operators so handling the apparatus that there is not an appreciable variation plus or minus from a definite point that is expected to be maintained.

Q. Well then in practical operation is it expected that there is an appreciable up and down flow in this B. t. u.?

A. Not appreciable; less than 2 per cent.

Q. Well then 2 per cent either way? That is about normal is it?

[fol. 401] A. I would say.

Q. Now in the event that there is a change in that, down, how, if at all does that affect your customers' service?

A. Adversely. If it falls appreciably they cannot use it.

Q. Why?

A. On account of the air-gas ratio, meaning that the domestic appliances that we are all familiar with being adjusted to a certain B. t. u. gas with a certain chemical structure; after that adjustment is made, if there is an appreciable drop in the B. t. u. of the gas, the air being in too great a quantity for the combustible, it will either snap back in the mixer or will not burn at all.

Q. I assume, of course, that all your burning apparatus in this territory must be adjusted to this particular kind of gas?

A. It is.

Q. You couldn't burn natural gas in it, could you, without adjusting it?

A. No. You can burn natural gas in it but not successfully.

Q. Have you any knowledge, in the last three years, of the B. t. u. content of your gas, going down as low as 276?

A. Gas will not burn at 276.

Commissioner Klinger: The question is do you know whether it went down that low?

The Witness: No, it has not.

Q. Not to your knowledge it has not?

A. Of my own knowledge it has not; that is my business to know that it has not.

Q. Who takes these charts off every day?

A. The plant foreman takes them off once a month, approximately, as the roll is used.

Q. That is what I mean. And are you in contact with them all the time?

[fol. 402] A. The apparatus is in my office.

Q. It is your business to supervise that?

A. That is my biggest business.

Q. It is in evidence here on behalf of the City that in April, 1928 a test was made out at the City Water Works, and the B. t. u. content was 276. Did you ever have any information of any such drop as that?

A. I had never heard it before.

Q. Do you think it would be possible for that to be accurately taken if that were the B.t.u. content found in that gas?

A. At 276?

Q. Yes.

A. It was not accurate.

Q. It is in testimony that this was taken by—what do you call that instrument?

A. Calorimeter.

Q. Yes, some eight years old. Never had been tested or repaired, nothing done with it in that period of time; in your experience would that probably make a very efficient test?

A. That cannot be answered definitely as to whether the apparatus is efficient or not. It could be set in a closed room for eight years and remain perfect. If it were used every day for a short period of time it would become in such a shape that it should be calibrated or recalibrated. The 276 gas you speak of, if that went into our system for any period of fifteen minutes every apparatus in Lima would fail to operate.

Q. The testimony is that this came out of your system.

A. In that case, as I have just mentioned, no piece of apparatus in Lima would have operated.

Mr. Bentley: Cross examine.

[fol. 403] Cross-examination.

By Mr. Light:

Q. You say that the character of gas you use there, the adjustments in the cookstoves of the city have to be so delicate that any little variation in B.t.u. will put them out of commission?

A. No, I didn't say that.

Q. How much of a variation would put them out of commission?

A. 25 per cent.

Q. 276 B.t.u. will burn won't it, Rodney?

A. Not on the air-gas ratio adjustments that are now set up on all of our apparatus.

Q. If it only had 50 B.t.u. it would burn, wouldn't it?

A. No.

Q. I do not mean in the stove; it will burn?

A. It will burn under certain conditions.

Commissioner Bricker: It would burn in one of these so-called calorimeters?

The Witness: With what B.t.u.?

Mr. Light: 50.

The Witness: No.

Commissioner Bricker: 200 B.t.u.?

The Witness: You will just be able to successfully use 200 B.t.u., understand, with an inert gas, which has a great bearing on the answer, in the calorimeter successfully.

Chairman Geiger: Well the way this mixed gas is used, the water gas is really a means by which you conduct the thermal units that are in the natural gas to the place of consumption. It has some thermal units of its own but you in-
[fol. 404] crease that and enrich it by putting the natural gas in it?

The Witness: Right.

Chairman Geiger: Then that takes the gas which carries the thermal unit to the place of consumption?

The Witness: Right.

Chairman Geiger: There is something in the gas, of course, that doesn't make any heat; what becomes of it; does it burn?

The Witness: Your thought is along the right lines, Judge. It is just incidental with the combustible which we know and talk of as gas, which is the fuel, is in such a fluid state that it can travel along as an atmosphere. It has the two characteristics, it can travel along through the line as a gas and it is also made up of fuel. The blue gas that we hear about is the base of domestic gas in all water gas plants. Now that domestic gas is enriched either with a liquid or gaseous hydrocarbon or enricher. If you do not use gas oil or its equivalent, which is any liquid hydrocarbon, you may use natural gas or an oil gas that is available. In our case we use natural gas.

Chairman Geiger: Now let me ask you right at that point. Lima is a distributing point for crude oil which is conducted from the oil fields to Lima by pipe lines and remains there in tanks so that you have always available a supply of crude oil, have you not, in Lima?

The Witness: With this exception. Judge, if you please, the refining companies will not sell you crude oil.

Chairman Geiger: Why people get crude oil to burn in their private burners, oil burners, in their private resi-
[fol. 405] dences, buy it by the barrel.

The Witness: Isn't that a certain grade of gas oil that has beeen refined, the residue?

Chairman Geiger: I don't know what it is; it makes heat.

The Witness: Understand the crude oil has many derivatios from which——

Chairman Geiger: Well don't let's go into that; but is there in Lima a supply of oil, whether it be crude oil or refined, which you can use to increase the thermal units in the water gas?

The Witness: No.

Chairman Geiger: Why not?

The Witness: The Solar Refining Company, through Fred Cuthbert, its president, told me four or five years ago that his company did not and never will, to his knowledge, again make gas oil or a substitute suitable for our business. At the time of inquiry I was up against an emergency; the natural gas had failed which was our source of enricher and I had to get what was refined oil or what we know as coal oil ship-ed one mile from the Solar Refining Company to our plant to keep that plant going at a cost of about nine cents a gallon.

Chairman Geiger: Now wait don't talk quite so long in explaining. You can explain it afterwards; but isn't it a fact that all about Lima, at the present time, or in Mercer County and in adjacent counties throughout over Mercer County, low producing oil wells now being pumped right on your own farms.

The Witness: It is.

Chairman Geiger: And you could, so far as anything in [fol. 406] the expense is concerned, gather up crude oil, that you could take to your retort and use it in place of your natural gas to enrich your water gas; that could be done couldn't it?

The Witness: That is possible but——

Chairman Geiger: Well now wait; I was getting to the other question. Considering the price of natural gas at 55 cents per thousand cubic feet, which you pay, what price would the crude oil be in order that you could substitute crude oil for natural gas?

The Witness: It would have to be—There is one point we are not together on. In using crude oil for an enricher, the resultant residuum may break up the oil—it is not successfully used in a water gas machine on account of the dirt, the difficulty of operation.

Chairman Geiger: Well there are machines that convert crude oil into gas are there not?

The Witness: They are built for that purpose and are entirely different from the machine we have.

Chairman Geiger: That is all right, grant that, it can be done and is done.

The Witness: Absolutely.

Chairman Geiger: So that the problem you have on is whether or not you can get crude oil and get a machine to convert it into British thermal unit to mix it with your water gas at a price that is less to you than 55 cents a thousand for natural gas; can or cannot that be done?

The Witness: That can be done but I do not know what the relative cost should be.

Chairman Geiger: Well, did you ever investigate it?

[fol. 407] The Witness: No.

Chairman Geiger: Well how much is crude oil a barrel up in your territory, eight dollars a barrel or four dollars a barrel?

The Witness: No, sir, it is about $1.

Chairman Geiger: Well, $1.75 a barrel. Well, taking crude oil at $1.75 a barrel, and natural gas at 55 cents a thousand cubic feet, which would make the cheapest mixture with your water gas.

The Witness: Natural gas.

Chairman Geiger: The natural gas at 55 makes it cheaper than crude oil at $1.50 a barrel.

The Witness: Yes, sir.

Chairman Geiger: All right, that is what I wanted to know.

By Mr. Light:

Q. You know nothing about cost do you, Rod?

A. Of what?

Q. Of your business down there; you do not handle costs?

A. Well no, not as a detailed accountant.

Q. As a matter of fact coal gas is manufactured as low as 30 cents, isn't it and at 35 to 37 cents, is a big price for coal gas isn't it?

A. You are covering a lot of territory now.

Q. You do not have a coal gas plant do you?

A. No.

Q. When you want to enrich your B. t. u. you have to use gas oil?

A. Yes.

Q. Which is more expensive than coal gas?

A. Your are comparing two different operations entirely.

Q. Yes, two different plants. You do not have a coal gas plant?

[fol. 408] A. Our company has.

Q. At Lima?

A. No.

Q. Now then, what you are doing at Lima at this time is diluting natural gas with water gas, isn't it?

A. No, we are enriching.

Chairman Geiger: You are enriching water gas with the natural.

The Witness: It all depends on whose dog this is. We are enriching blue gas with natural gas.

Q. All right. The B. t. u. of your gas at the station where you use this tester remains the same a mile away from the plant in your lines?

A. In what?

Q. In your lines?

A. Yes.

Q. So that if I take gas from your lines at my home which I guess is about two miles from where your plant is, I would get the same B. t. u. that you had there?

A. Absolutely.

Q. And you use what kind of a—calorimeter, is that right?

A. Yes. A recognized recording calorimeter made by the Cutler-Hammer Company at Milwaukee.

Q. Is that known as the Thomas?

A. Known as the Thomas.

Chairman Geiger: If you had a sufficient quantity of natural gas which you could purchase, that could be distributed through your distributing plants to the consumer as your distributing plant now is, excepting the burning devices at the stove.

The Witness: They would have to be changed, — is all.

Chairman Geiger: They would have to be changed.

The Witness: Yes.

Chairman Geiger: But you have enough capacity to do it?

[fol. 409] The Witness: Yes.

Chairman Geiger: Now assuming that you do not have any natural gas, have you got enough capacity in your

manufacturing plant to make all the water gas that can be consumed?

The Witness: We have, with what I have considered to be adequate reserve when I made your recommendation.

Chairman Geiger: By adequate reserve you mean what, 30 per cent reserve?

The Witness: Approximately 30 per cent reserve. Understand, the water gas business is a hazardous operation.

Chairman Geiger: Well, never mind about that. Now you are seeking to get business in adjacent towns are you not?

The Witness: Well of course we are always seeking new business.

Chairman Geiger: Well you are going to furnish it with water gas or mixed gas?

The Witness: Now really I could not answer that because I don't think it has gone that far along.

Chairman Geiger: Well, are you going to sell some of that natural gas you get to the adjacent towns?

The Witness: As I say, I don't know.

Chairman Geiger: But you are ready to put in pipes from Lima to adjacent towns to furnish them with gas, either mixed, water or natural.

The Witness: Right.

Chairman Geiger: You don't know how much.

The Witness: No.

Chairman Geiger: Well now do you think it is good business if you haven't got enough gas to property supply Lima, [fol. 410] and the thing is so hazardous that it is, that you invest a lot of money to lay a pipe from Lima to these adjacent towns to supply them with gas, is that good business?

The Witness: It is good business, to step out and get more business and build up the rates to meet it if necessary.

Chairman Geiger: Well, but if you were having a price that is a losing price, the more business you have the more you lose.

The Witness: Well you will have to get into the accounting for that part.

Chairman Geiger: All right.

By Mr. Light:

Q. Mr. Lynch, if a chemist using a calorimeter any place in your line should find a result on an average of 475 or 476, you could only explain that by his instrument being wrong?

A. Or an honest miscalculation in the computation of the results that is gotten to make up the final B. t. u. on the spot calorimeter.

Q. You are not a chemist?

A. No.

Q. What is your position there?

A. General Superintendent.

Q. In charge of operation?

A. In charge of operation.

Q. Of course the best way to know whether or not that calorimeter is correct is to test it, isn't it?

A. Yes.

Mr. Light: That is all .

Redirect examination.

By Mr. Bentley:

Q. You test yours, do you?

A. Why this is tested by the people, the manufacturer. They visit the plant about every three meonths and make [fol. 411] a thorough inspection of it and they have trained my plant foreman to maintain it throughout the intermittent periods.

Mr. Bentley: That is all.

Chairman Geiger: Let me ask you this. As I understand it your forty-four miles of pipe from Lima over in Wyandotte County is half ten inch pipe and half twelve inch pipe, is that right?

The Witness: Yes.

Chairman Geiger: There they are met and connected with an eight inch pipe?

Mr. Bentley: That is corrected, by a ten inch pipe.

Chairman Geiger: Which supplies gas to you.

The Witness: Yes.

Commissioner Klinger: They corrected that while you were out and said it was a 10 inch pipe.

Chairman Geiger: And by a ten inch pipe which conveys to the point where it joins your pipe, enough gas to supply

Lima, or what you get, rather, and also conveys gas to other towns which have been named in the record. Now is that pipe from Lima to Wyandotte County, being 10 inch and 12 inch, larger than is necessary?

The Witness: I do not think so, because you would have to have a definite initial pressure entering that line and maintain at that pressure before you could determine whether your pipe was too large or too small.

Chairman Geiger: Well but the conveying line that conveys not only your gas but a lot of other gas is only eight inches.

[fol. 412] The Witness: Yes.

Chairman Geiger: Your line is 10 inches and 12 inches, and necessarily only conveys a portion of the gas that is conveyed by the high pressure 140 inch line. Now what is the necessity of having a 10 and 12 inch line?

The Witness: There is lots of periods have occurred in times gone by when the 12 inch line was too small on account of the initial pressure in the line; was not passing sufficient gas.

Chairman Geiger: Oh I see all that. But you are at the end of the conveyance, transportation; you are at one end.

The Witness: Yes.

Chairman Geiger: You have got a bigger pipe for forty-five miles than is the diameter of the pipe that conveys your gas and a lot of other gas.

The Witness: Yes.

Chairman Geiger: Now if you were laying that over again, would you lay a 10 inch pipe in there or would you put an 8 inch pipe.

The Witness: There is a definite reason for that on account of the drop in pressure travelling through a pipe line. There is many things entering into the amount of the drop——

Chairman Geiger: Well never mind about that. Would you put a 10 inch pipe or a 12 inch pipe or would you put an 8 inch pipe?

The Witness: I would put in the same size line that is in there now.

Chairman Geiger: All right.

By Mr. Light:

Q. And if the president of your company said he would [fol. 413] not, he would be mistaken?

A. He would probably be mistaken because listen, he is the president but I am the guy that is down there at midnight trying to get the gas.

By Mr. Bentley:

Q. Now Rodney, give the reason why you would construct the pipe line that way.

A. As you go overland with any initial pressure, you will wind up with a lower final pressure. The speed of the gas going through the first amount of pipe is necessarily under high pressure. As you travel miles and your pressure drops the speed is regarding, is slowing down on account of the friction, and the friction only, of the side of the walls of the pipe. To relieve that friction, expanding the pipe and the gas has an added impetus to travel along to its final destination.

Mr. Bentley: That is all.

Chairman Geiger: Well now that is just exactly the reverse of the way you lay a pipe. If that were true, when you lay a distribution system in a city, you would start out with a small pipe from our source of supply then you would step it up to a larger pipe and then you would step it up to a larger pipe and when you finally got it into the house of the consumer, you would have the largest pipe of the bunch. Now you would absolutely reverse that, you would start out with the larger pipe and decrease it as you get down to a point which conveys less gas.

The Witness: May I suggest, Judge, that you do neither? You continue the same size pipe, assuming it is adequate enough to start with, continue that same size pipe as you extend all those as often as necessary, you are to carry a high pressure belt around that and feed in at the local points [fol. 414] because in the situation we are now talking about you only start with a plant with five ounces of pressure, a blow against your hand. We are talking about 45 miles or a hundred miles of pipe lines that has 300 pounds on it, if they can get it, five pounds at other times; see my point?

Chairman Geiger: Yes, I see.

Commissioner Bricker: The exhibits may be introduced; I don't think these have been, have they?

Mr. Bentley: No. I offer the letters. I desire to offer all the letters.

Commissioner Bricker: They may be admitted.

And thereupon Company's Exhibits A to E inclusive were offered, introduced and admitted in evidence on behalf of the West Ohio Gas Company and are herewith submitted, so marked.

* * * * * * *

[fol. 415] INQUIRIES SUBMITTED BY CHAIRMAN

Chairman Geiger: Now, I have been troubled about a thing all night long; I haven't slept very well because I was thinking about this, and I may be wrong, very far wrong, but I have drawn up my inquiries in writing so that it may [fol. 416] be submitted to you and to the expert on the other side and I will read them into the record.

"Assuming that:

"The evidence has disclosed the fact that the Lima plant is dual in its nature, that is that it furnishes a mixed gas, 60 per cent of which is artificial, manufactured at the plant in Lima, and 40 per cent is natural, transmitted through a ten inch main, 44 miles of which is owned by the West Ohio Gas Company.

"The evidence tends to show that the cost at the mixing retort of artificial gas is 20 cents per thousand cubic feet; that the cost of the natural gas at the mixing retort is 55 cents and that the cost of the mixed gas is 39 cents.

"The evidence tends to show that if natural gas were available, the present equipment is sufficient to transmit and distribute the same and that if there was no natural gas available the capacity of the artificial plant is adequate to produce sufficient artificial gas for the present consumption.

"There is evidence also to the effect that the natural gas is necessary to enrich the artificial gas to a sufficient number of B. T. U. units. The question is whether or not the entire artificial plant and the entire transmission pipe for the natural gas is actually used and useful or whether only that portion of each is used and useful which produces the percentage of each gas that goes to make the mixture that is distributed.

"It is evident that if there was no natural gas the 44 mile pipe would not be properly used and useful and it is equally evident that if there was a sufficient quantity of natural [fol. 417] gas procurable at a price less than the cost of the artificial gas that the artificial plant would be discarded and that it would not then be property used and useful.

"With both plants being used to less than the capacity of each to produce a mixed gas, can it be said that the value of each plant makes up the value of the property used and useful or is only that part of each plant that contributes to the mixture, used and useful?

"If the latter be the case, is the correct measure of that portion of each plant that is used and useful, the proportion in which each gas makes up the mixed gas? In other words, assuming that the artificial plant contributes 60 per cent to the gas, should 60 per cent of its plant be considered as the portion thereof that is used and useful and assuming that 40 per cent of the mixture is natural gas, should 40 per cent of the value of the natural plant be considered as that portion thereof which is used and useful?

"If this apportionment is not correct, is there a method by which it may justly be determined what portion of the several plants less than the whole, are used and useful in supplying mixed gas?

"Would it be proper to ascertain what proportion of each plant is used in supplying the manufactured and the natural gas that is finally blended in the mixture and to ascertain therefrom the value of the property that is used and useful in producing the mixed gas, making proper allowances for necessary reserve equipment.

"Can this be done?"

* * * * * * *

[fol. 418] Mr. Light: May I call the Commission's attention to one further fact? The testimony before the Commission is that the capacity of the artificial plant is three million cubic feet per 24 hours. The testimony is further before the Commission that the use of this plant in Lima per annum is about two hundred million cubic feet, or we are getting in Lima less than a 20 per cent use of that plant.

* * * * * * *

[fol. 419] And also—

P. J. DEMOREST, called on behalf of the City of Lima, being first duly sworn, testified as follows:

Examined by Mr. Light:

Q. State your name and address to the Commission.
A. P. J. Demorest, 2084 Neil Avenue, Columbus, Ohio.
Q. What is your business or profession, Mr. Demorest?
A. Professor of metallurgy, Ohio State University.
Q. How long have you been so engaged?
A. A little over 20 years.
Q. And in your profession tell the Commission whether or not you are familiar and skilled in the methods and manner of testing calorimeters used for measuring B. t. u.'s in gas.
A. I have specialized in that work for at least 20 years and I have had very extensive experience in it.
Q. Tell the Commissioner, Demorest, whether or not yes-
[fol. 420] terday morning you proceeded to Lima and went to the City Waterworks office and there met the city chemist, Mr. Smith.
A. I did.
Q. Tell the Commission whether or not you and Mr. Smith proceeded to test the calorimeter presented to you there by Mr. Smith.
A. Yes, we did.
Q. And did you test the calorimeter?
A. Yes, I did.
Q. Give the Commission the result of your test.
A. I found that the calorimeter was correct within less than one per cent.

Mr. Light: Cross-examine.
Mr. Hebel: No cross-examination.

* * * * * * *

[fol. 421] Cross-examination.

By Mr. Light:

Q. Mr. Pringle, the West Ohio Gas Company in Lima made less profit in 1926 than they did in 1925, did they not? That is, you made a profit of $141,000 in 1925 and a profit of $117,000 in 1926?

A. Yes.

Q. And the profit was still less in 1927?

A. Yes.

Q. Will you please explain to the Commission why, on what business plan or basis you felt free to spend that much money for a building there at this time in view of the business being done by the Company?

A. I really couldn't answer that intelligently.

Q. You would know generally that would be very poor business, don't you?

A. I wouldn't say so.

Q. That is a beautiful building out there, isn't it?

A. I feel it is.

Q. It is a monument to your customers?

A. It is nothing only a building with a little individuality mixed in.

Q. What was the rent on the building you were occupying before you undertook to move into the beautiful place?

A. $315.00 per month.

Q. Why didn't you stay there?

A. Why, it was entirely inadequate for our force. We have been laboring for years and years with the quarters that were not sufficient to take care of the clerical force.

Q. Your business hasn't increased in the last five years, has it?

Mr. Hebel: He hadn't quite finished his answer.

[fol. 422] didn't offer that?

Mr. Light: No, I didn't.

Commissioner Bricker: I wish that you might submit a copy of both franchises for the natural and the manufactured gas and let them by stipulation become a part of the record. Will counsel get together on the active ordinances then in so far as the City is concerned and furnish the Commission copies of it?

Mr. Light: Yes.

Mr. Bentley: I think we rest.

• • • • • • •

[fol. 423] Mr. Bentley: There is one item of evidence that has been discussed considerably here and that is the b. t. u. content on the 1st day of April. There is evidence before the Commission as to a man who made the examination of

it and then it is now established today by a very esteemed authority that the instrument used was correct. Now, we have here the roll of our apparatus on that same date. Without putting Mr. Lynch back on the stand to identify it, I wonder if we may offer it?

Mr. Light: All right.

Commissioner Bricker: It may be admitted.

Mr. Bentley: That part. Of course, this roll covers a month but the 28th day of April, which is the question, is the first day. Mark it Company's Exhibit H.

Commissioner Klinger: It may be admitted.

And thereupon the paper writing above referred to was offered, introduced and admitted in evidence on behalf of the West Ohio Gas Company and is herewith submitted, marked Company's Exhibit H.

Chairman Geiger: It is agreed by counsed for either side that the question propounded by myself and yet remaining unanswered may be answered by the respective engineers of the Company and the City in writing and that each side waives cross-examination of the witness who may answer it in writing.

* * * * * * * *

[fol. 424] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

In the Matter of the Appeal of West Ohio Gas Company from an Ordinance Passed by the City of Lima, Ohio, March 19, 1928, Ordinance No. 2675, Fixing the Maximum Price to Be Charged for Gas in the City of Lima, Ohio, for a Period of Five Years from and After the Effective date of that Ordinance

Proceedings

Before Honorables E J. Hopple, Chairman, Frank W. Geiger and John W. Bricker, Public Utilities Commissioners, Thursday, January 21st, 1932

Appearances:

Messrs. E. W. Hedel, Charles C. Marshall, and H. O. Bentley, on behalf of West Ohio Gas Company. Messrs.

Melvin C. Light and Elmer E. Welty, On behalf of the City of Lima.

[fol. 425] **Morning Session**

Thursday, January 21st, 1932.

Commissioner Bricker: The matter for hearing this morning is case number 5137, in regard to the appeal of the West Ohio Gas Company from an ordinance of the city of Lima. It comes on for hearing this morning on the Protests of the City and the Company against the tentative value fixed by the Commission.

Let us have the appearances, please.

Mr. Bentley: E. W. Hebel, Charles C. Marshall (who is sick and not able to be here at this time) and H. O. Bentley, for The West Ohio Gas Company.

Mr. Light: Melvin C. Light and Elmer E. Welty for the city of Lima.

Commissioner Bricker: Will the company proceed?

Mr. Hedel: In examining the files in the Commission's office yesterday I noticed that there were two reports in those files by the Chief Engineer to the Commission, one by the Engineer in charge of the valuation to the Chief Engineer, and one by the Chief Engineer to the Commission. I don't know whether, under your practice, those letters are a part of the record without special introduction or not.

Commissioner Bricker: Those are part of the records.

Mr. Hebel: I presume that any transcript that may be made up of the record would include those?

Commissioner Bricker: Yes, but I would say that you had better introduce them so there will be no question in the mind of anybody who might make up the record at the [fol. 426] time you examine the engineer.

Mr. Hedel: I would like to ask the Commission to make them a part of the record, and ask that they be incorporated in the record.

Commissioner Bricker: That will be permitted.

Mr. Hedel: I will ask that these two reports be marked as Commission's Exhibits 1 and 2.

And thereupon the reports above referred to are marked for purposes of identification herein as Commission Exhibits 1 and 2.

Be it remembered That on the hearing of the above entitled cause before the Public Utilities Commission of Ohio,

the West Ohio Gas Company, to maintain the issue on its part to be maintained, offered and introduced in testimony on its behalf the following evidence, to-wit:

[fol. 427] L. F. DABE, called for purposes of cross-examination, being first duly sworn, testified as follows:

Cross-examined by Mr. Hedel:

Q. State your name please.
A. L. F. Dabe.
Q. Are you connected with the Public Utilities Commission of Ohio?
A. Yes.
Q. In what capacity?
A. Engineer.
Q. How long have you been connected with that Commission?
A. Since May 1st, 1921.
Q. Have you been acting as an engineer for the Commission during that entire time?
A. Yes.
Q. Have you had any experience in making appraisals of Public Utility properties in that period?
A. All that period has been on appraisals.
Q. What training for that work did you have prior to the time or what experience in that work prior to the time you became associated with the Commission?
A. Formerly employed by various utilities and construction companies doing utility work.
Q. Did you have anything to do with a valuation of the property of the West Ohio Gas Company during the last year or two?
A. Yes, I was in charge of the inventory known as case number 5137 before this Commission.
Q. Will you state what was done by you or by people under your supervision in connection with any appraisal of that property?
[fol. 428] A. We made a complete inventory of the physical property of the West Ohio Gas Company property located in the city of Lima, and of the transmission system serving the city of Lima, observing the property that we could observe. The remainder of the property was from the records of the——

Q. Was your purpose in making that to determine the property used and useful in serving the city of Lima alone?

A. Yes.

Q. With gas?

A. Yes.

Q. And who assisted you in that work?

A. There was Engineer Foster, Morris, Smith, Fink, Haines, and Mr. Grant was on it part of the time.

Q. But the work was done under our supervision?

A. Yes.

Q. After you had finished that work did you make a report to the Commission as to your findings?

A. Yes.

Q. I hand you a document marked Commission Exhibit No. 1, and ask you to examine that and state whether that is a report you made to the Commission after your examination and appraisal of the property used and useful in serving the city of Lima with gas.

A. Yes, that is my report.

Q. Does that report show the depreciated value of the property as found by you?

A. This report does not show the depreciated value in the summary of the inventory. The report shows a comparison of the company and the city and the Commission reproduction value and also touches on certain items of depreciation but it does not show the complete present value.

Q. Did you make a study of the depreciation of the property in connection with your investigation?

A. Yes.

[fol. 429] Q. And did you report to the Commission the result of that study of the depreciated value of the property?

A. Yes.

Q. Are you familiar with the tentative valuation as made by the Commission and shown in an order entered under date of September 15th, 1931?

A. Yes.

Q. You have a copy of that before you?

A. Yes.

Q. In that order the summary has set out, showing certain reproduction value, certain depreciation and certain figures as to present value?

A. That is correct.

Q. Are those figures as to present value for each and every item appearing in that summary the figures as to present value determined by you after your inspection of the property?

A. Yes.

Q. And is the amount of depreciation, the percentage of depreciation shown in that summary attached to the order of September 15th, the amount of depreciation found by you as a result of your examination and inspection of the property?

A. Yes.

Q. As of what date did you make your examination of the property?

A. Around July and August of 1930, during that period.

Q. You determined the inventory of the company's property at that time?

A. You mean as of that time?

Q. Yes, what did you do in reference to determining the inventory of the property?

A. We took the property as it existed at that time and corrected it back to a date certain.

Q. Which was what?

A. March 31st, 1928.

Q. And you actually inspected the property during the summer of 1930?

A. Yes.

[fol. 430] Q. That was the date on which you determined the then per cent condition of the property?

A. Yes.

Q. Did you find any difference between the inventory of the company and the inventory which you finally established?

A. Some minor differences, no large amounts; some minor difference in distribution mains, and we also found an error in the final set-up of the transmission lines which is corrected now. The point of ownership of the transmission line had never been definitely settled until since this report was made to the Commission.

Q. That now has been settled?

A. Yes, and we have supplemented our final sheet by admitting—I think it was 1,553 feet of transmission line.

Q. Which is added?

A. Added to the property.

Q. What do you find to be the reproduction cost of that number of feet you have entered?

A. Total cost, $44,853.54, the portion allocated to Lima, $2,547.47 reproduction value.

Q. New?

A. Yes.

Q. What do you find the per cent of depreciation of that?

A. 16.81.

Q. And what do you find the present value?

A. Present value, the portion allocated to Lima, $2,118.97.

Q. That was property which in fact existed in March, 1928, but was not included because the eastern end of the transmission line wasn't definitely established?

A. That is true.

Q. And should be added to the present value, as found by you and set out in the report?

A. Yes.

[fol. 431] Q. Did you personally actually inspect the physical property in order to determine the per cent condition?

A. Yes.

Q. Did anyone assist you in that inspection?

A. Mr. Foster.

Q. In what way did you determine the per cent condition of the transmission and distribution mains?

A. The transmission and distribution and service lines, depreciation was placed and determined by actually observing the lines at points where the company made openings; our depreciation was determined from that inspection.

Q. What did you do when you inspected the property, these mains?

A. We took the depth of the pit and averaged our main and fixed our percentage as the actual condition, not breaking closer than 5 per cent.

Q. What did you find to be the per cent condition of the transmission mains following that inspection?

A. The average percent of depreciation or condition, which did you ask?

Q. The per cent of depreciation.

A. 18.72.

Q. Turning to the report attached to the order of the Commission of September 15th, 1931, it shows a total depreciation of 45.01 on the transmission mains. Did you establish a per cent depreciation in that amount?

A. That includes an amount of amortization, total amount, $132,439.41.

Q. Did you establish that amortization allowance?

A. That——

Q. What did you do——

A. That was established in a former order of the Commission, the same property, and after conferring with the [fol. 432] Commission I was advised to deduct that amount from the value.

Q. That doesn't represent any actual physical depreciation in that company?

A. No, sir.

Q. This amount of actual physical depreciation for the transmission mains which you found was $94,302.88?

A. Yes, sir.

Q. Does that represent the depreciation of 18.72 per cent on the entire reproduction value of the main-, or upon the reproduction value after you deduct the amortization?

A. It is taken on the reproduction of the value allocated to Lima before amortization.

Q. Is the $132,439.41 deducted for amortization, the entire amount based on the two orders to which you referred, or only the portion or the amount which is allocated to Lima?

A. That is the entire amount for Lima; that order setting up the amortization originally in 1921 to 1922 was only for the portion of the line serving Lima.

Q. Turning to the items in the final summary of accounts which was incorporated in the order of September 15, 1931, the manufacturing plant items, being five items appearing in that summary, do the figures for present value for manufacturing plant, land, buildings, yard structures and miscellaneous represent the total present value of all the manufacturing plants?

A. No, sir, there has been a 15 per cent deduction there taken off for over-capacity of plant.

Q. And that is true—there is a 15 per cent reduction in the reproduction value too?

A. Yes.

Q. That is taken out on the basis of the final paragraph [fol. 433] in your report of July 20th identified as Commission Exhibit 1?

A. In parts, yes.

Q. Did you establish the reproduction value of the manufacturing plant land?

A. No, sir.

Q. Who did that?

A. Engineer Haines.

Q. He is connected with the Commission?

A. Yes.

Q. So the reproduction value of the land appearing in the final summary is not your determination?

A. No, sir.

Q. Do you know how that was determined?

A. No, sir. He did that work generally under my supersion.

Commissioner Bricker: That was determined by a conference of the Commission, taking into consideration the testimony of all of the witnesses and the testimony of Mr. Haines.

Mr. Hedel: Was there a report filed by Engineer Haines in reference to that?

Commissioner Bricker: Yes. He will be available if you want him.

Mr. Hedel: Can that report be made a part of the record too?

Commissioner Bricker: Yes.

Mr. Hedel: When we call Mr. Haines we will have that report marked as Commission Exhibit 3.

Commissioner Bricker: I think it was in the record before; it may not be.

Mr. Hedel: I didn't find it in the files yesterday.

By Mr. Hedel:

Q. Did you determine the reproduction value and the present value of the manufacturing plant buildings yourself?

A. Mr. Grant and Mr. Haines made the inventory of the [fol. 434] buildings and arrived at the reproduction and present value of the buildings.

Q. Mr. Grant is a commission engineer too?

A. Yes.

Q. Tur-ing to the item of undistributed overheads or general overheads, 7 per cent, did you determine the amount of those overheads and the overhead allowance after a study of the West Ohio Gas Company's property?

A. No, sir, I used the 7 per cent under instructions from the Commission.

Q. Tur-ing to the item of working capital, materials and supplies, slightly in excess of $63,000, did you determine those items after a consideration of the West Ohio Gas Company in its operations in the city of Lima?

A. That figure represents what the company's operating expenses were, that they thought should be applied against working capital and on their books as average material and supplies. In fact it is the same figure that the company submitted in their inventory for working capital less an amount of approximately $37,000 which they had included and classified as cash in bank.

Q. And that was entirely deducted?

A. That was entirely deducted.

Q. Did you make any determination of the going value attached to the property of the West Ohio Gas Company used in serving the city of Lima?

A. No, sir.

Mr. Hedel: That is all.

No cross-examination by the City of Lima.

[fol. 435] Mr. Hedel: I don't think it will be necessary to call Mr. Foster and examine him, but I would like to examine Mr. Haines, and I would like to see the report, if it is available, in reference to the land. It was not in the files yesterday. I can put another witness on while we are waiting.

Commissioner Bricker: All right, I wish you would.

* * * * * * *

[fol. 436] And also—

Frank Pringle, called on behalf of the West Ohio Gas Company, being first duly sworn, testified as follows:

Examined by Mr. Hedel:

Q. State your name.

A. Frank Pringle.

Q. Are you connected with the West Ohio Gas Company?

A. I am.

Q. In what capacity?

A. Comptroller.

Q. How long have you been so employed?

A. For the West Ohio Gas Company and its predecessor companies for twenty years.

Q. In your office as comptroller do you have charge of the records and accounts of the company and its predecessors?

A. I do.

Q. And they are kept under your direct charge and supervision?

A. They are.

Q. Are you the same Frank Pringle who testified here heretofore in this cause?

A. I am.

Q. I hand you a document marked Company Exhibit 102, and ask you to examine that and state whether that was prepared by you or under your supervision and direction?

A. It was.

Q. And is that prepared from the books of the company?

A. Yes.

Q. Will you state what this document shows?

A. This is a statement taken from the records of the company showing the rate of return on combined values that have previously been fixed by the Public Utilities [fol. 437] Commission of Ohio, plus net additions to capital since the period 1922 to 1930 inclusive.

Q. Are those figures determined from the books of the company?

A. They are.

Q. Are all expenses of the company included in the items of expenses?

A. All except the item of amortization.

Q. Of the transmission lines?

A. Yes, east.

Q. But nothing is included in expenses for payment of bond interest or such items?

A. No interest charges whatsoever.

Q. And the exhibit shows the net rate earned in each of those years?

A. It does.

Q. And then shows the net return as figured by the company for each of those years?

A. Yes, sir.

Q. Would you explain on what values the net return was determined?

A. The values—the combined values—I might add that this is for the entire West Ohio Gas Company, embracing all of its districts. The value shown under the year 1925 is a combined valuation of various properties owned by the company, as fixed by the Public Utilities Commission; immediately under that figure, appearing after the combined values, is the net additions to capital during that particular year, showing that at the end of 1925 there was a total value of $3,019,187.80. That value then is forwarded into the next column or in the year 1926, and immediately under the figure is the additions during the year 1926, which is added, and makes a total of $3,143,-038.05 as the combined valuation plus the additions at the end of the year 1926.

[fol. 438] Q. And the valuations for each succeeding year are built up on the same basis?

A. Yes.

Q. When did the West Ohio Gas Company first start to operate?

A. December 1st, 1924.

Q. So that the figures prior to 1924 are for the predecessor companies?

A. Yes.

Q. And so indicated on the exhibit?

A. Yes.

Q. I now hand you a document marked Company Exhibit 103, and ask you to examine that and state whether that was prepared by you and under your direction?

A. Prepared under my direction with my assistants.

Q. From the records of the company?

A. Yes.

Q. Which are in your charge?

A. Yes.

Q. Now will you state what that exhibit shows?

A. This is a statement of the West Ohio Gas Company, Lima district, showing the rate of return on valuation fixed by the Public Utilities Commission, plus net additions from the period of the year 1922 to 1930 inclusive.

Q. And showing the net return based upon those figures?

A. Yes.

Q. During the period 1922 to 1925, is the valuation fixed by the Commission in the order of September, 1931?

A. Yes.

Q. And already of record in this case?

A. Yes.

Q. The values subsequent to the year 1924, commencing with 1925 through to the present time, is based upon the valuation fixed by the Commission in an order entered in 1925?

A. Yes.

[fol. 439] Q. Already of record in this case?

A. Yes.

Mr. Hedel: I would like to offer in evidence Company Exhibits 102 and 103.

Commissioner Bricker: They may be admitted.

And thereupon the documents above referred to are admitted in evidence on behalf of the West Ohio Gas Company and herewith submitted and marked respectively Company's Exhibits 102 and 103.

Cross-examination.

By Mr. Light:

Q. Do you have the figures of additions between the order of 1921 and that of 1925?

A. Which one of the exhibits are you referring to, for all districts?

Q. 103, the Lima district.

A. I am afraid I don't quite understand.

Q. Beginning with the year 1925 in Exhibit 103 you show additions?

A. Yes.

Q. You show no additions between the first order of the Commission of 1921 fixing a valuation of $943,000 and the second order of the Commission in 1925 fixing a valuation of $2,000,000?

A. The net additions during 1922, 1923 and 1924 were not available.

Q. Why not?

A. We decided to make this statement, this exhibit, at the last minute, and we did not have an opportunity to find the old records of the Lima Natural Gas Company [fol. 440] showing net additions during that time, for those three years in particular. Of course what we would have found would not have increased the value shown as fixed by the Commission. I might add the value shown there in

1922, 1923 and 1924, fixed by the Commission, was on the property of the Lima Natural Gas Company only, of $943,547.00.

Q. That was before you added this illuminating gas pipe?

A. Yes.

Commissioner Geiger: In your net additions as you have set out here, is there any place in there the item of depreciation appearing in connection with it, or put in as gross amount?

The Witness: No, sir, the depreciation is included with total expenses.

Commissioner Geiger: There is no accounting for depreciation that may have occurred between the time the exhibit was made and the date on which the value of the property is found?

The Witness: On the item of additions, no.

Commissioner Geiger: Would there be any proper depreciation item there?

The Witness: There naturally would be, yes.

Commissioner Geiger: How would you estimate that; what would be a proper amount?

The Witness: I wouldn't know, I am not an engineer.

Commissioner Geiger: As I understand it, your showing here does not account for any depreciation?

The Witness: That is right.

Commissioner Geiger: But have you been expanding [fol. 441] your plant during that time?

The Witness: What period?

Commissioner Geiger: From 1925 on.

The Witness: Every year we have had additions to our plant, yes. I don't—I mean the entire property; I don't mean the manufacturing plant particularly. Every year we are obliged to put in—obliged to buy new meters, put in new services and so forth.

Commissioner Bricker: That is what I meant, have you any more consumers in the city of Lima now than you had in 1925?

The Witness: I don't know exactly; I hardly think so.

Commissioner Bricker: If that were true, would not the depreciation just about keep a balance with the net additions?

The Witness: Well, it would depend a great deal, I would judge, on the price of property to be considered from the

standpoint of depreciation. I might add that the depreciation figures shown are depreciation figures as determined by this Commission.

Commissioner Bricker: As of 1925——

The Witness: Yes.

Commissioner Bricker: Or as of the date for this 1928—the overall condition of the property now is not very far from what it was then?

The Witness: I wouldn't say a whole lot, not very much difference.

By Mr. Light:

Q. In these additions how do you distinguish between an addition and a replacement? You just mentioned meters; [fol. 442] still you have no more subscribers?

A. You note I said this was net additions to capital makes the difference between property retired and property added; each year it is true we retire property, condemn property and abandon property.

Q. Some of your property burns up or gets broken up; it is really a replacement rather than an addition?

A. This is the excess of additions over replacements.

Q. But you don't have as many customers now as you had?

A. I don't think so, I don't know the exact figures.

Q. What would occasion any more additions, then; why would you need to buy another meter?

A. For example, meters retired; suppose you would replace one meter and yet there might be an increase in your capitalization by virtue of the fact the meter you are buying now would be of greater cost than the meter replaced. There might be a difference in freight rates.

Q. Is that what these figures are?

A. No, sir, not altogether, all additions are property, office furniture, meters, service mains, shop equipment, transportation equipment.

Commissioner Geiger: When you replace an old meter with a new meter you would merely—you deduct from the value of your property the appraised value of that meter of the value of its installation originally?

The Witness: We endeavor to retire its original cost.

Commissioner Geiger: And not its depreciated cost?

The Witness: That is right, charge it to the retirement reserve and the new meter capitalized.

[fol. 443] Commissioner Geiger: But no depreciation has been taxed against the new meter; assuming it has been there for three or four years before the valuation of 1928, it does not bear any depreciation?

The Witness: No, sir.

Commissioner Geiger: I don't quite get why you put in any valuation of additions prior to the year when the engineers made the valuation of the property; did they not take all those into consideration when they made their appraisement and valued it then at the then worth, considering depreciation?

The Witness: I don't know just what the engineers took into consideration, but I suspect if they didn't, they certainly should have taken into consideration all of the property the company owned as of March 31st, 1928, but we have no other valuation before us than the last valuation fixed by the Commission in 1925. We used that from the beginning of the year 1925 and added to it each year's net additions for the purpose of this exhibit.

Commissioner Geiger: Wouldn't the matter we should consider be confined to net additions made at a date subsequent to the valuation of the property March 1st, 1928, what concern have we with what net additions may have been made prior to that time, because it is not true that the engineers took into consideration the value of the property that may have been enhanced by net additions prior to March 1st, 1928?

The Witness: That is true. The engineers made their ap- [fol. 444] praisal as of March 1st, 1928, and of course took in all property that existed at that time, but for the purpose of this exhibit, as I stated before, the last valuation that the company had was made by the Commission in 1925, and for the purpose of this exhibit we started with the figured fixed by the Commission in 1925, the value of the property, and added to it each year the net additions for the purpose of this exhibit. Of course, the net additions we show during 1925, 1926, 1927 and the early part of 1928 does not appear as part of the company's property in the Public Utilities Commission appraisal, but after the year 1928 that report also covers the net additions for the years 1929 and 1930, which is not included as I understand it in the report of the engineers of the Commission.

Commissioner Geiger: All right.

[fol. 445] And also—

EMORY HAINES, called for purposes for cross examination, being first duly sworn, testified as follows:

Cross-examined.

By Mr. Hedel:

Q. State your name, please.

A. Emory Haines.

Q. Are you connected with the Public Utilities Commission of Ohio?

A. Yes.

Q. In what capacity?

A. Appraisal engineer.

Q. How long have you been connected with the Commission?

A. About 13 years.

Q. Have you been making appraisals during all that time?

A. That is true.

Q. Did you have anything to do with the appraisal and valuation of property of the West Ohio Gas Company used and useful in serving the city of Lima, Ohio, with gas?

A. I did.

Q. What part of the property did you appraise?

A. Principally the land. I secured the information on which the valuation was ultimately placed.

Q. Did you fix that value by your own inspection and examination and knowledge of the land and land values in Lima?

A. I did not myself.

Q. In what way did you determine that valuation?

A. I secured such information as I thought would be valuable for the Commission in determining this value and submitted it to this Commission, who placed the value on [fol. 446] the land occupied by the manufacturing plant of the West Ohio Gas Company.

Q. And that data was submitted in the form of a written report, was it?

A. That data was furnished to Mr. Dwyer in the form of a written report and an attached sketch.

Q. Do you have a copy of that report with you?

A. I have.

Q. This report is dated March 16th, 1931?

A. That is correct, I think. I have no copy of it.

Q. Pardon me, here is a copy.

A. That is correct, March 16th, 1931.

Q. The copy you have before you is not signed by you, but it is a true copy of the report you made to the Commission, and signed it?

A. That is correct, the original copy to Mr. Dwyer was signed. This is my personal copy and consequently is not signed.

Q. But is the same as the original?

A. It is the same as the original that went to Mr. Dwyer.

Q. Did the original you furnished Mr. Dwyer have attached to it the sketch map?

A. This is the only sketch. This was attached to the original until it was sent and then I took the sketch and filed it with my own copy.

Q. But if I understand you correctly, this sketch was furnished to Mr. Dwyer?

A. That is true, it was attached to the original sheet until the value was determined and then I detached it and placed it with my own personal copy.

Q. At what time with reference to this date of this letter did you make your inquiry in Lima in reference to the value of this real estate; when were you up in Lima to inquire [fol. 447] about the real estate value?

A. I forget just the dates we were up there. However, we can get that.

Q. Was it in 1931?

A. I forget just the date.

Q. I am not interested in the day, but was it in 1931?

A. It was in the summer of 1930.

Commissioner Bricker: It was only a few months before the date of this letter?

The Witness: I think that is right.

By Mr. Hedel:

Q. The individuals mentioned in that letter are the only individuals from whom you made inquiry as to the value of this property?

A. That is correct.

Q. You refer to certain testimony of five members of the Lima Real Estate Board heretofore given in this cause?

A. Well, I used—I took that from the original case. I did not interview them.

Q. Then you refer to the value placed in evidence by Mr. Allensworth; you did not consult with him?

A. No, sir.

Commissioner Bricker: That was not a valuation of Mr. Allensworth. He merely accepted the valuation that was placed on it by the company. I think he disclaimed any intention of finding that value himself, but simply adopted for his use the value the company had submitted on the land.

By Mr. Hedel:

Q. You talked with Mr. Crider?

A. I did.

Q. And with Mr. Feltz?

A. Yes.

Q. Is Mr. Feltz in the real estate business?

A. He is connected there with a loan company. I don't know whether he is connected directly with the real estate business or not.

Q. What inquiry did you make from Mr. Feltz in reference to this land; what did you tell him you wanted to find out?

[fol. 448] A. As I recall, I told him we would like to get a fair valuation on the land only, of the lots owned by the West Ohio Gas Company on which their manufacturing plant was located. We didn't want him to consider a sheriff's sale in his viewpoint or an inflated sale such as somebody might want to pay for the location; more or less of a fair, conservative value.

Q. Do you know what knowledge Mr. Feltz had as to real estate values in Lima?

A. I do not know personally.

Q. Or what experience he had in dealing with real estate?

A. No, sir, I would be unable to state that. He was merely connected with the loan company and lots of times we do select banks and loan companies, thinking they are fairly well qualified or at least should be, in real estate values for their own loans.

Q. But you did not make any specific inquiry from him as to his knowledge?

A. No, sir, took it more or less for granted when we solicited this.

Q. Did anyone suggest to you that Mr. Feltz should be interviewed?

A. There were different ones suggested by different groups. As I recall, our first visit was to the Chamber of Commerce and they gave me quite a list of names, and during these times maybe I would pick up additional names from the ones I would interview. The original list given me by the Chamber of Commerce, lots of times when I would call on them they would be out of the office or out of the city, and so on, and I picked up extra names here and there wherever I went, of men I thought in my judg- [fol. 449] ment were qualified for passing on land values in Lima.

Q. You don't remember who suggested you see Mr. Feltz?

A. I don't recall any individual.

Q. Is the same thing true as to Mr. Bowers; do you remember who suggested that you see him, if anybody?

A. There was someone in that building suggested Mr. Bowers. There was someone in that building whom I called on, and if I recall right they didn't care to venture a price on that, but suggested I might see Mr. Bowers. I believe he is connected with the real estate office and I don't know whether he has any other business or not.

Q. Did you ask Mr. Bowers substantially the same questions you asked Mr. Feltz?

A. We state that to practically everyone—or I do, try to. Maybe there is times we overlook some of it, but it is our intention to do that with each and every person.

Q. Make substantially the same inquiry?

A. Yes.

Q. I assume that is true in the case of Mr. Booze and Mr. Barr also?

A. Yes.

Q. Do you know whether Mr. Barr is a hotel man?

A. Yes.

Q. Do you know what knowledge or experience he had there that made him able to judge the value of real estate in Lima and the location of this property?

A. I do not. The only thing I know, we happened to be stopping at the hotel and I considered he possibly knew the

value of real estate in Lima. I understood he had lived there some time.

Q. Were any of these last four men you interviewed familiar with the acquisition by Mr. Koon of the property referred to on the first page?

A. That I couldn't tell you.

[fol. 450] Q. You didn't discuss that?

A. No, sir.

Q. Did you discuss with any of those men whether they had information as to actual sales at Lima of land similar to the land on which the manufacturing site of the West Ohio Gas Company is located?

A. I talked to them in some respects, but as that is an exceptionally large tract of land, there was practically no comparative sales in Lima in that location in which that tract is located.

Q. Did you make any inquiry of Mr. Booze or Mr. Barr either as to the number of real estate transactions they handled a year?

A. No, sir, I did not.

Commissioner Bricker: I mentioned about Mr. Allensworth and the appraisal, which you assumed to be his figures, because of the fact there was some criticism leveled at the Commission for attempting to go into this question of the valuation of the real estate after the city had agreed to it. We did make it our business to see whether or not Mr. Allensworth and the city were agreed to that figure, and found he simply used that because it was the figure submitted and he made no appraisal at all.

Mr. Hedel: I didn't have the record in mind and I was taking the statements——

Commissioner Bricker: I just wanted to explain my position on that.

Mr. Hedel: I would like to ask that this exhibit, Commission Exhibit No. 3, be made a part of the record, and I desire to formally offer the previous two exhibits, Commission Exhibits 1 and 2.

Commissioner Bricker: The exhibits may be admitted. [fol. 451] Mr. Haines may make a copy of Exhibit No. 3 and submit it for the record.

And thereupon the documents above referred to are admitted in evidence on behalf of the Public Utilities Com-

mission of Ohio and are herewith submitted and marked respectively Commission Exhibits 1, 2 and 3.

Mr. Hedel: That is all with Mr. Haines.

No cross-examination by the City of Lima.

Mr. Hedel: That is all we have to offer.

And thereupon the West Ohio Gas Company rested.

Commissioner Bricker: Does the City have any witnesses at this time?

Mr. Light: No, sir.

And thereupon the City of Lima rested.

And the foregoing was all the evidence offered, introduced and admitted on behalf of the West Ohio Gas Company and on behalf of the City of Lima, Ohio, on this hearing of this cause.

* * * * * * *

[fol. 452] Tuesday Morning Session

June 7, 1932.

And thereupon the further hearing of this cause was resumed, pursuant to adjournment, before Honorables E. J. Hopple, Chairman, Frank W. Geiger and John W. Bricker, Public Utilities Commissioners.

Appearances:

(Same parties present by their respective counsel as at previous hearing.)

Commissioner Bricker: The matter for hearing this morning is the appeal of the West Ohio Gas Company, Number 5137, Lima; the appeal of the West Ohio Gas Company, Number 5666, Kenton. The cases are for hearing this morning in both cases upon the revenues and expenses. Let us have the appearances if there have been any changes.

Mr. Bentley: No changes on behalf of the utility.

Commissioner Bricker: The company may proceed, I think, with the City of Lima case first.

And be it further remembered That the West Ohio Gas Company, to maintain the issues on its part to be main-

tained, offered and introduced in testimony on its behalf, the following evidence towit:

[fol. 453] And thereupon a paper writing was marked for the purposes of identification as Company Exhibit Number 104.

FRANK L. PRINGLE, recalled, being heretofore duly sworn, testified as follows:

Examined by Mr. Hebel:

Q. You are the same Mr. Pringle who testified heretofore in this cause?

A. I am.

Q. And you have been with the West Ohio Gas Company and its predecessors how long?

A. Approximately 21 years.

Q. What office do you hold with the corporation at the present time?

A. Comptroller.

Q. And how long have you held that position?

A. Since July of 1931.

Q. As comptroller of the company, what are your duties and what records of the company do you have under your charge and supervision?

A. All the records of the company.

Q. That includes, does it, the accounting records?

A. Yes, sir.

Q. And are the accounting records of the West Ohio Gas Company kept according to the uniform classification of accounts for gas utilities?

A. Yes, sir.

Q. I will ask you, Mr. Pringle, whether you have prepared a statement showing the amount of money available for return to the West Ohio Gas Company from its opera- [fol. 454] ations in Lima, in the Lima District, after allowance for depreciation reserve and amortization?

A. I have.

Q. Covering what years?

A. The years 1927 to 1931, inclusive.

Q. The ordinance involved in this case was passed to take effect as of what date?

A. As I recall, the ordinance was passed in March, 1928.

Q. Then this statement which you have prepared in-

cludes one calendar year prior to the passage of that ordinance?

A. It does.

Q. And the periods since the passage of that ordinance up to and including December 31, 1931?

A. Yes, sir.

Q. I hand you document marked Company's Exhibit Number 104 and ask you to examine that and state whether that is the statement which you just testified had been prepared by you?

A. Yes, sir, it is.

Q. Now, will you take Company's Exhibit 104 and explain briefly what that exhibit sets forth?

A. Company's Exhibit 104, as shown by the table of contents, the first page of this exhibit, shows the revenue and expense for a five year period from the year 1927 to '31 inclusive, and a statement of the revenue and expenses for the years '27, '28, '29, '30 and '31.

Q. Mr. Pringle, the first statement to which you referred, which in the table of contents is shown as Statement Number 1, covers the statement of revenues and expenses during the years you have mentioned?

A. Yes, which is a summary of the sheets Number 2, 3, 4, 5 and 6.

Q. And documents Number 2 to 21, in the table of con- [fol. 455] tents cover supporting data for the first statement, is that correct?

A. That is right.

Q. Now, turning for a moment to the statement 1, what does that statement show to be the net applicable to return on valuation for the year 1927?

A. $88,654.47.

Q. You are familiar, are you not, with order Number 179, issued by this Commission in the prior valuation case of West Ohio Gas Company?

A. I am.

Q. And that order was introduced in evidence in this cause?

A. As I remember it was.

Q. Do you have in mind the amount which the Commission found in that value as the net the West Ohio Gas Company was entitled to earn as net return for each year?

A. The order mentioned specified that the company should earn $172,019.00 on the valuation established at that time.

Q. And that was at what rate of per cent. per annum?

A. That was 7.8 per cent.

Q. Now, during the calendar year of 1928, what was the net earnings applicable to return on valuation for the Lima District?

A. $120,096.66.

Q. And for the year 1929?

A. $100,681.05.

Q. And for the year 1930?

A. $101,532.95.

Q. And for the year 1931?

A. $80,738.25.

Q. Are the items of expense shown on Document Number 1 of this exhibit according to the books of the West Ohio Gas Company except as explained in supporting documents of this exhibit?

A. They are.

Q. And, if I understand you correctly, Documents Number 2 to 21 in this exhibit are supporting data showing the information as to the make-up and break-down of these va- [fol. 456] rious operating expense items shown on the summary document Number 1?

A. Yes, sir.

Q. Now, will you explain briefly the nature of each of these supporting documents?

A. On schedule 2 of the Exhibit, revenue and expense for the year ending December 31, 1927, shows in the first column of figures as shown on the records of the company; the second column is the adjustments made in order that the proper picture might be obtained of the facts of the company's experience in operation in the Lima District. The amounts shown in the adjustment column, either plus or minus, added to the first column, results in the figures as shown in the corrected total or the last column of this schedule 2, and in the upper righthand corner of schedule 2 is Notes and Comments, which explain any adjustments that are made on this and the subsequent schedules contained in this exhibit.

Q. Schedule 2 is the statement of adjustments to show the corrected net return for the Lima District for the year ending December 31, 1927?

A. Yes. Then the corrected total as shown on Schedule 2 of $404,290.60, operating expenses, carried forward under the year 1927 to Schedule 1.

Q. And the same thing is true for each of the subsequent years?

A. Yes, sir.

Q. This exhibit is headed, Mr. Pringle, Lima District of the West Ohio Gas Company. Will you explain how the accounting records of the company are kept between the various localities served?

A. The company at the present time operates in eleven towns. The operation of each town is confined within that [fol. 457] town and records set up to include in each district that district's operating expenses. In other words, the expenses are so recorded that we can get the true operating picture in each district in which the company operates.

Q. What is included in the Lima District?

A. All the customers that reside in the City of Lima and immediately without the corporation limits and also Cridersville, Ohio. It has always been the policy of the company to include Cridersville's experience in that of Lima for the reason that what experience we have in Cridersville, expenses and revenues, have been negligible and for that reason we have always included them in the Lima District operation.

Q. How big a community is Cridersville?

A. Oh, I imagine Cridersville is around three or four hundred people.

Q. Do you know approximately how many customers you have in Cridersville?

A. Slightly over a hundred, around 123 or 124.

Q. And is that all domestic or residence service?

A. Practically all domestic consumption.

Q. Do you know approximately what the revenues are from Cridersville in a year?

A. They run around something approximately $3000.00 a year.

Q. The gross revenue?

A. The gross revenue, yes.

Q. And about what proportion of the company's gross revenues are derived from operations in the Lima District?

A. Around between six and seven per cent.

Q. Now, will you explain on schedule 2 of Exhibit 104 the items that appear in the adjustment column and then make what explanation is necessary as to each of the succeeding [fol. 458] schedules as to revenues and expenses for the other four years?

A. The only adjustment appearing on Page 2 is that of $11,708.00. This addition is made for amortization of pipe line in order to give effect to the total amortization authorized by the Public Utilities Commission under its order dated April the 25th, 1925, in case Number 179.

Q. Schedule 3 is for the calendar year of 1928?

Commissioner Bricker: Just a moment. Is that the total amount which was allowed by the Public Utilities Commission for the purposes of amortization?

The Witness: The total amount allowed by the Commission was $23,416.00.

Commissioner Bricker: And you have set aside that amount for this purpose?

The Witness: Yes, sir.

Commissioner Bricker: Have you done that throughout all the previous years back to 1925?

The Witness: Back in 1925, as I recall, we had amortization, but a lesser amount than this.

Commissioner Bricker: But the total amounts which were allowed by the Commission were set aside during those years?

The Witness: They weren't all taken up on the books, no. That was the amount authorized, but the company did not take up on the books the full amount as authorized.

Commissioner Bricker: Why not?

The Witness: Because in Order Number 179 as issued by the Public Utilities Commission, the Commission had estimated that the company should earn $172,019.00, which was [fol. 459] equivalent to 7.8 per cent. on its valuation. Also at the same time they estimated that the gross revenue for gas sold in the Lima District would approximate $711,500.00. This amount of money would pay the ordinary and necessary operating expenses and give a 7.8 per cent. return on the company's property and provide for an annual charge for depreciation and amortization. But the estimation made by the Commission was not true to the extent that the company's experience since that time has shown that we have never at any time realized the revenue that

the Commission said that we would realize. Therefore, the revenue actually realized did not pay the ordinary and necessary operating expenses and give a 7.8 per cent. return on the property and of course did not provide for all the annual charges as stipulated in the order.

Commissioner Bricker: What were your expenses in 1925 from which the Commission estimated the rate of return?

The Witness: 1925?

Commissioner Bricker: Yes.

The Witness: Well, I haven't that information, Mr. Bricker. The amount that I quoted you of gross revenue of *of* $711,500.00 was the amount found by the Commission to be the gross revenue that the rates would produce.

Commissioner Bricker: On what was that based?

The Witness: Under the rate that we were charging for gas at that time, as I recall, first 400 cubic feet, $1.25; the next 9600, $1.10, as I recall, and the next 15000, $1.05, I believe, and all over 25000 at $.75.

Commissioner Bricker: Do you mean then that this Commission in 1925 estimated that you would have a gross rev-
[fol. 460] enue from operation of over $700,000.00?

The Witness: Yes, sir.

Commissioner Bricker: And it only amounted to $492,-000.00?

The Witness: 492?

Commissioner Bricker: Gross in 1927.

The Witness: Oh, in '27, yes, that is true.

Commissioner Bricker: What was — in '25?

The Witness: I don't recall, I haven't that information, Mr. Bricker, in 1925. My exhibit brings in 1927.

Commissioner Bricker: There must be something wrong in the calculation if a mistake was made of $200,000.00 in a gross of $700,000.00. What I am trying to arrive at is the way you have made your accounting for this amortization provision here, and it is also reflected in your valuation and we had quite a difficult time in straightening out that *that* amortization on a basis that should be made for the distribution lines because of those two previous orders which you had not complied with, because, as you claimed, — the large change in income.

The Witness: As I recall it, our gross revenue in 1925, was somewhere around $500,000.00.

Commissioner Bricker: What I am trying to arrive at is why the Commision would have made any set-up upon a return of $700,000.00, when you were only making $500,000.00 and fell below that.

The Witness: I am sorry, I can't tell you what the Commission had in mind.

Commissioner Bricker: There must have been some rea-
[fol. 461] son for it.

The Witness: Perhaps the old Commission or its engineers could tell you that. I couldn't. And it has been shown decidedly that that was an over estimation, because we have never at any time had such a gross revenue and for that reason haven't been able to set up the annual charges as provided by the Commission.

Commission Bricker: As I remember, between the first order and the second order, there was some discovery made to the effect that this was wrought iron instead of cast iron as it was first estimated, is that not right?

The Witness: I think that was on the transmission line, yes.

Commissioner Bricker: And there was a change. That is all that this amortization applies to, isn't it?

The Witness: Yes, that is true.

Commissioner Bricker: Proceed. It may clear up as we go along.

Q. Your figures which you mentioned as to estimated revenue and net revenue, Mr. Pringle, were from Order 179 issued by the Commission, is that correct?

A. Yes, sir.

Q. Now, the actual amount set up on your books for the amortization of pipe lines for the year 1927, that is the amount which otherwise would have gone into surplus account, was $11,708.00, is that correct?

A. That is true.

Q. And the adjustment shown in the second column of figures of $11,708.00 is to get into the third column the total amount of money which the Commission had authorized to be set up for that purpose, under Order 179?

A. Yes, sir.

[fol. 462] Q. And show what the net available for return would have been if the full amount had been set up?

A. That is right.

Q. Now, will you continue with your explanation of the other four years?

A. Schedule Number 3 of the Exhibit covers the revenue and expenses for the year ending December 31, 1928, and is prepared along the same general lines as explained concerning Schedule Number 2, the first column of figures showing as appears on the company records, and the adjustment column showing the adjustments made necessary in order that a true picture may be had of the company's actual operating experience under the Commission's order in Case Number 179.

Commissioner Geiger: What is that order you are talking about in 179, was it an order made in this case?

The Witness: That was the last order issued to our company by the Public Utilities Commission in rate litigation and dated April 25, 1925. We have continued to operate under that order up until the present case.

Commissioner Geiger: Do I understand that that case required you to add an adjustment each year of $11,708.00 to your amortization of pipe lines?

The Witness: In order that we would take advantage of the full amount of amortization allowed by the Commission, yes.

Commissioner Geiger: What was the amount allowed by the Commission, what per cent?

The Witness: $23,416.00 was the annual charge.

Commissioner Geiger: On this transportation line?

The Witness: The transmission line east of Lima, yes.

[fol. 463] Commissioner Geiger: What per cent. was that?

The Witness: That was an amount determined by the Commission's engineers to be compounded at four per cent. annually to retire the full value of that line.

Commissioner Geiger: In what period of time?

The Witness: Over a ten year period.

Commissioner Geiger: Why should such an order have been made? The pipe line will not be amortized in ten years, will it, it should not be?

The Witness: Of course, the ten years—no, it will not be, because we have never been able to set up on our books the full amount as authorized by the Commission on account of insufficient earnings.

Commissioner Bricker: The whole order was predicated upon the non-use of that line after ten years, was it not?

The Witness: Yes.

Commissioner Bricker: Upon the theory that you would be wholly upon your artificial gas plant at that time?

The Witness: That was the theory at that time, yes, sir.

Commissioner Geiger: That isn't correct, though, now? You are still using that pipe line?

The Witness: Yes, sir.

Commissioner Geiger: What I don't get quite clear in my mind is why, so far as your expenses, you should add each year this $11,000.00 adjustment in order to take advantage of an order of the Commission made in 1925 that contemplated the abandonment of this line and its total loss [fol. 464] to you and you are not now abandoning it, but are in fact using it.

The Witness: The ten year period isn't up yet, either.

Commissioner Geiger: Well, have the facts so changed that you now know that you are not going to abandon that line and rely upon artificial gas?

The Witness: That theory probably wasn't accepted in the valuation as the value of the transmission line was reduced by $132,000.00, the amount that the Commission engineers figured that we should have taken up on our books as amortization up to the time of this case, they assume that we did take it up and reduce the value of that line by $132,000.00, notwithstanding the fact that all of that amount did not appear in our books.

Commissioner Bricker: But you include it in this set-up?

The Witness: I do, yes.

Commissioner Geiger: Well, that, as I understand, was on the theory that this transmission line was to be abandoned at the end of the period of ten years or at least it was to be amortized over a period of ten years?

The Witness: That is true.

Commissioner Geiger: That just isn't true, is it? You are not going to amortize that line, but will continue to use it?

The Witness: Well, I can't answer that, Mr. Geiger, whether it will be at the end of the ten year period or not. The ten year period hasn't expired.

Commissioner Geiger: Well, some time during the proceeding, give us the chance to look at that order under [fol. 465] which we are proceeding.

Mr. Hebel: That is in case 179.

Commissioner Geiger: Case 179. See what it was all about. You don't need to do it now. Just as a matter of convenience, get it to us.

Q. Had you finished with your explanation?

A. No, I had not. The first adjustment shown here is an addition of $5,031.39 made to general and miscellaneous expense to cover amortization of rate case expense as shown on Schedule 13 of this exhibit. That amount is the proportionate cost of this present rate case up to May 1st, 1932. It is our plan to amortize this expense over a 60 months' period, and it appears in this exhibit for the first time in the year 1928, as the ordinance was passed in March, 1928.

Q. In other words, on this item, if I understand you correctly, Mr. Pringle, the expense of this rate case as shown in these exhibits is amortized over the life of the ordinance as provided by its terms?

A. It is.

Q. The practice of the company is to carry that rate case expense in an expense account pending the hearings in this case?

A. It is. It is carried in a deferred account.

Q. And for that reason, it does not appear on the books under operating expenses for the year 1928?

A. That is true.

Q. But you have made an adjustment to allocate to the year 1928 the proper proportion of the expenses incurred to date?

A. That is true.

Q. The item then is smaller than it would finally be because you have taken into account nothing for such expenses as may be necessary from the first of May on?

A. Yes, sir.

[fol. 466] Q. Does that item include anything for the rate case experience involved in the rate case immediately preceding the present one or the case in which Order 179 was entered?

A. It does not. It is all expenses incurred since the inception of the present litigation.

Q. And it covers an allocation of how many months for the year 1928?

A. Nine months for the year '28.

Q. That was on the basis of the ordinance——

A. Being passed in March, '28.

Q. To take effect at the end of March, '28?

A. Yes, sir.

Q. Now, was there any other adjustment on that?

A. The only other adjustment on this page is that of amortization and the explanation concerning this item would be the same as offered for that as appearing on Page 2 of this exhibit.

Q. In the expenses as shown by the company appears a retirement allowance of $53,639.00, and I believe a like item appears on Schedule 2 of the exhibits?

A. That is true.

Q. On what is that based?

A. That is the amount authorized by the Public Utilities Commission in its order 179 as an annual charge for depreciation that the company might make, which represented three per cent. of its then depreciable property.

Q. Exclusive of the transmission line?

A. Yes, sir.

Q. All right, will you turn to your next schedule?

Commissioner Geiger: You say it is exclusive or does it include transmission?

The Witness: Excludes it.

Commissioner Geiger: Have you got anything for the [fol. 467] transmission line on Sheet Number 3?

The Witness: No, amortization covers the transmission line, and that is not included in the depreciation item at all.

Commissioner Geiger: Well, retirement allowance, $53,-639.00, do you mean by that that that is the depreciation alowance for your distribution plant?

The Witness: Yes, that was the amount fixed by the Commission in Order 179.

Commissioner Geiger: Well, that isn't in this case, is it? How much did they fix, what per cent did they fix?

The Witness: Three per cent of the depreciable property.

Commissioner Geiger: Well, they had an appraisement of the property?

The Witness: Yes.

Commissioner Geiger: And is that the same as the appraisement in this case?

The Witness: No.

Commissioner Geiger: More or less?

The Witness: I suspect that the depreciation in the present case will be somewhat different in view of the fact they have a less value than we had in Case 179, but in this exhibit, we were giving you the operating expenses as appear on the company's records and no new depreciation figure has been determined yet, and for that reason, we are showing you the picture as it appears on our records.

Commissioner Geiger: As it would have been in the former case?

[fol. 468] The Witness: Yes, sir.

Commissioner Geiger: Of course, you don't expect that to be final in this case. What has the depreciation allowed in the former case, which is over and superseded by this case, got to do with the allowance in this case for amortization?

The Witness: I am not contending, Judge, that this amount be the amount in the present case. I suspect it will be somewhat higher.

Q. That is the amount that the company actually set up on the books for those two years?

A. Yes.

Commissioner Geiger: Under the former ruling of the Commission?

The Witness: Yes, sir. We had no authorization to charge any other amount than that. As I explained in the beginning, we were still operating under order 179 at the time this ordinance was passed by the City of Lima.

Commissioner Bricker: Mr. Pringle, I don't want to break into the continuity of this, but I do want to clear up a matter or two. You have been talking about the order in 179. I note this in that particular order or in the report of the engineers:

"Effect of P. U. C. O. Number 1 schedule. In order to determine the probable revenue on P. U. C. O. Number 1 Schedule, which is the schedule filed by the West Ohio Gas

Company December the 1st, 1924, to become effective January 1st, 1925, I have made a detailed examination of the consumer's accounts for the year 1924, classifying the consumptions to conform to P. U. C. O. Number 1. This schedule applied to the 1924 sales will produce $711,500.00, which amount is $4,384.00 less than the total cost of service [fol. 469] as I have determined it."

Now, was there a change in your consumer's accounts from 1924 to 1927 that would account for $200,000.00 worth of gas consumption?

The Witness: I wouldn't say that there was.

Commissioner Bricker: Would you say that this must have been a mistake in calculation then on the 1924 consumers' accounts?

The Witness: Judging from our experience, I couldn't reach any other conclusion than that.

Mr. Hebel: I might say, Mr. Commissioner, that Exhibit 103 shows what the actual revenues were during each year from 1925 on. I think the maximum was 502,000.

Q. Now, will you continue, Mr. Pringle?

A. The next schedule appearing in this exhibit, Number 4, I offer the same explanation concerning this schedule as I have schedules 1, 2 and 3, and say in connection with the adjustments that the first adjustment shown is an addition of $6,708.52 to include into the year 1929 that year's proportionate charge of the rate case expense as shown on Schedule 13 and the amortization of $11,708.00 appearing in the adjustment column, the same explanation as made heretofore.

Q. That statement covers the calendar year of 1929?

A. It does.

Q. Now, turning to Schedule number 5, Mr. Pringle, that covers the calendar year of 1930?

A. It does.

Q. And will you explain in reference to that schedule the nature of the adjustments?

A. The first adjustment shown, Number 1, is a credit to the Lima District of $4,028.49 resulting from the sale of [fol. 470] 7,899,000 cubic feet of gas to the Delphos Gas Company prior to the acquisition. It is deducted as not being applicable to the Lima District operations. In other words, on the first of October, 1930, the company began

selling gas to the Delphos Gas Company and for the purpose of this exhibit, it is deducted from the Lima District revenue.

Adjustment Number 2 is a deduction of $2,808.88 made to the Lima District holder cost to compensate for gas transferred to Delphos Gas Company during the last three months of the year 1930, prior to the time that the company acquired the Delphos Gas Company. Gas transferred to the Delphos Company subsequent to the acquisition of the Delphos Gas Company and gas transferred to the towns north of Lima during the last three months of the year 1930 were credited to the Lima District operating cost through a "Gas Transferred" account as shown on Schedule 7, production expense, of this exhibit.

Adjustment Number 3 is a deduction of $157.98 made to the Lima District distribution expense to compensate the Lime District for expenses of pumping gas to Delphos during the last three months of the year 1930. Credit for pumping charges incurred in supplying Delphos subsequent to the acquisition of the company and the towns north of Lima are made through an account, "Duplicate distribution charges, credit", as shown on Schedule 9, distribution expenses, of this exhibit.

Adjustment Number 4 is an amount of $4,711.26 made to general and miscellaneous expense to cover amortization of rate case expense as shown on Schedule Number 13 for the year ending December 31, 1930.

Q. Now, at this point, Mr. Pringle, I understood you to [fol. 471] say that for the purpose of these exhibits, you were spreading the rate case expense equally over the 60 months' period covered by the terms of the ordinance?

A. Yes.

Q. So that 1930 would include a full year of rate case expense?

A. Yes.

Q. And 1929 would include a full year of that rate case expense?

A. Yes.

Q. Now, I note that the rate case expense shown in adjustments on schedule 4 is a different amount than shown in adjustment on Schedule 5. Will you explain why that difference exists?

A. That was on account of a certain amount of this expense was written off during the year 1930 and con-

sideration was given for that amount in order that there would be no duplication in expenses on this exhibit.

Q. And such amount as was written off appears in the first column of figures?

A. That is true.

Q. And that amount plus the amount in the adjustment column gives you the total amount applicable to the twelve months' period, is that correct?

A. For 1930, yes.

Q. All right, you may continue.

A. The next adjustment of $11,708.00 is that of amortization of pipe line as explained heretofore.

And the last amount shown in red is the total cubic feet of 7,899,000, the quantity of gas sold to the Delphos Company for the last three months of the year 1930 and is eliminated from the gas sales in the Lima District.

Q. Now, Schedule 6.

A. Schedule 6 under adjustments, the first adjustment made is that of $13,247.15, the amount realized from the sale of 25,974,800 cubic feet of gas to the Delphos Gas [tol. 472] Company prior to the time the company was taken over by our company and is shown as a credit for revenue as it is revenue derived outside of the Lima District.

Q. This schedule is for the year 1930?

A. It is.

Q. Calendar year?

A. Yes. The second deduction is an amount of $9,036.63 made to the Lima District holder cost to compensate for the gas transferred to the Delphos Gas Company during the first ten months of 1931, prior to the acquisition of the Delphos Company. Gas transferred to the Delphos Company subsequent to the acquisition of that company and gas transferred to the towns north of Lima during the year 1931, is credited to Lima District costs through account "Gas transferred" as shown on Schedule 7, production expense, in this exhibit.

Q. And that last item you mentioned serves to reduce the operating expenses to the Lima District?

A. Yes, sir.

Deduction 3 is an amount of $517.50, made to Lima Distribution Expense to compensate or credit the Lima District for expenses of pumping gas to Delphos during the first ten months of 1931. Credit for pumping charges in-

curred in supplying Delphos subsequent to the acquisition of the company and towns north of Lima is made through Account "Duplicate Distribution Charges, Credit", as shown on Schedule 9, distribution expenses, of this exhibit.

The addition under adjustment Number 4 of an amount of $6,708.52 is made to general and miscellaneous expense to cover amortization of rate case expense as shown on Schedule 13 for the year ending December 31, 1931.

The addition, Adjustment Number 5, of $20,965.50, to [fol. 473] retirement allowance made to give effect to total retirement allowance authorized by the Public Utilities Commission under date of April 5, 1925, in case Number 179.

Adjustment Number 6, an addition of $23,416.00, amortization of pipe line made to give effect to the total amortization authorized by the Public Utilities Commission under date of April 25, 1925, in case Number 179.

Number 7, an addition of $8,387.46, made to cover Lima proportion of the company liability under federal income tax law.

And the last amount shown under adjustment column is an amount of 25,974,800 cubic feet of gas deducted from the Lima District sales as being the quantity of gas sold to the Delphos Gas Company.

Commissioner Bricker: Do you reflect in any way here, Mr. Pringle, the amount which was actually taken from your reserve for retirement allowance? How did it work to the three per cent?

The Witness: Our experience has been in some instances slightly higher than three per cent, but the average has been three per cent.

Commissioner Bricker: So that your experience just about reflects the allowance made by the Commission?

The Witness: Yes, sir.

Mr. Hebel: I don't think Mr. Pringle understood your question, Mr. Bricker, from the nature of his answer.

(Question by Commissioner Bricker read as follows: "Do you reflect in any way here, Mr. Pringle, the amount which was actually taken from your reserve for retirement allow-
[fol. 474] ance? How did it work to the three per cent?")

The Witness: No, this exhibit here does not in any way show any deductions or additions to retirement allowance.

Commissioner Bricker: That will be shown during the hearing this morning, though?

The Witness: Well, I assume so. It is a matter of depreciation.

Mr. Hebel: We haven't any exhibit prepared on that, but would be glad to furnish information if it isn't already in some of these other exhibits.

Commissioner Bricker: It is altogether likely that the city will show that experience. Well then, in 1931, you only charged on your books a portion of the three per cent allowed for retirement and none of the amortization charge permitted?

The Witness: That is true.

Commissioner Bricker: That was because of lack of earnings?

The Witness: Yes, sir.

Commissioner Bricker: Now, one other question. Will you explain to me the forfeited discounts shown in your revenues, the last item?

The Witness: That is an amount received from customers who were delinquent in the payment of their bills. In other words, if a bill isn't paid within ten days from the date it is rendered, an additional charge of ten cents per thousand cubic feet is paid on account of such delinquency.

Commissioner Bricker: It is really a penalty then more than in the nature of a discount?

[fol. 475] The Witness: Yes.

Commissioner Bricker: Well, there is one further question in regard to the income tax. I see you have noted no charge for income tax on your books for 1931. I believe you explained that, though. Why was that not reflected in the books?

The Witness: Our parent company makes a consolidated tax return to the treasury department of the government, and they have had a controversy with the government for some little time on different items that they have claimed in their return, and in view of the fact that the amount for the year was not determined or we weren't able to determine it at that time, we did not set it up on our books. However, in order to give effect to our liability under the income tax law, under adjustments we have set in an amount of $8,387.46. It does not appear on the books. As stated, the first column shows the picture of the books.

Commissioner Bricker: How did you arrive at that amount?

The Witness: That is the net taxable income from the Lima District.

Commissioner Bricker: This will all be brought out, I presume, but I was concerned about the uncollectible expense item. There is no confusion on account of that item—or uncollectible accounts, no confusion at all in your revenues and expense statement on that, it is first charged in your revenues as collected and then deducted as uncollectible accounts?

The Witness: No, not in that respect, Mr. Bricker. We [fol. 476] set up the entire earnings of the company and report them as such.

Commissioner Bricker: On the basis of your billings?

The Witness: Yes. Then we know that all of the amounts set upon our books will not be collectible and for every year, we estimate about one-half of one per cent of the gross sales will be uncollectible. Some years we are slightly over that amount and at times under that, but the last two or three years, of course, collections have been terrible on account of business conditions and our uncollectibles will run slightly over one-half of one per cent.

Commissioner Bricker: Well then, the item of uncollectible accounts shown in your operating expenses is really an estimate?

The Witness: That is set up now for the year 1931. Now, we will carry that amount on our books. In other words, we will carry all of our delinquent accounts on our records through the year 1932, that is to say, the bills that were incurred during the year 1931, we will carry them through during the entire next calendar year, then at the end of 1932, if they aren't collectible, then we charge them off to an uncollectible accounts reserve that we set up anticipating uncollectible accounts, and adjust our reserve at the end of the year according to the actual amount of the uncollectible accounts.

Commissioner Bricker: If it is collected, then it is returned in revenue?

The Witness: Yes, sir.

Q. Now, that finishes the summaries by years of adjustments on your operating expense?

A. It does.

[fol. 477] Q. Now what does Schedule 7 show?

A. Schedule Number 7 is a detailed statement showing the cost of mixed gas for the calendar years 1927 to 1931, inclusive. We start off with all the separate and distinct accounts under water gas production and show the cost of natural gas purchased, gas storage expense, maintenance of a holder, work down to the total cost of mixed gas.

Q. And the item appearing in that column is what item on Schedule Number 1, if any?

A. The amount of $174,962.36 appearing on Schedule 7 is the cost of mixed gas, which appears as gas produced and purchased under operating expenses under the year 1927 on Schedule 1.

Q. In other words, Schedule 7 is a break-up of the items as shown in the first line under operating expenses of Schedule Number 1?

A. That is true, and also for the years 1928, '29, '30 and '31.

Q. All right, is there any other explanation that is necessary in connection with that schedule?

A. I think not.

Commissioner Bricker: I think this is in the record some place, but what is approximately the cost per thousand cubic feet of producing your water gas?

The Witness: Holder cost for gas in the gas holder ready for distribution?

Commissioner Bricker: Yes.

The Witness: 1931, the holder cost was 37.79 cents.

Mr. Light: That is the mixed or the blue gas?

The Witness: That is the mixed gas in the holder ready to go into the distribution system. The year 1930 was 35.56 cents. Year 1929, 35.51 cents. The year 1928, 35.37. And [fol. 478] the year 1927, 38.53 cents per thousand.

Commissioner Geiger: How do you mix your artificial and your natural, in what proportion?

The Witness: About 65-35 at the present time.

Mr. Light: Which is the 65 and which is the 35?

The Witness: Blue gas, 65.

Commissioner Geiger: Which gas?

Mr. Hebel: The blue gas, water gas.

Commissioner Geiger: What does it cost you to manufacture your manufactured gas before you mix it with the

natural gas? These figures you have just given is the mixture ready to deliver?

The Witness: Approximately 20 cents the last year.

Commissioner Geiger: Approximately 20 cents. And what is the B.t.u. content of the mixture?

The Witness: 550.

Commissioner Geiger: What is the B.t.u. content of the artificial?

The Witness: About 300.

Commissioner Geiger: Wouldn't it be cheaper, from the way you have set it up here, for you to furnish to your customers artificial gas entirely if you can do that at an initial cost of 20 cents a thousand, when you mix it with your artificial, it is 35 cents a thousand, isn't that about right?

The Witness: Yes. Well, I couldn't tell you now, Judge, whether it would be the most economical to do that or not. Some study would have to be made.

Commissioner Geiger: What do you pay for your natural?

The Witness: 55 cents a thousand.

[fol. 479] Commissioner Geiger: You are mixing 20 cents a thousand gas with 55 cents a thousand gas to produce a mixture worth 35 cents, is that right?

The Witness: If you eliminate natural gas you would have to substitute some other enriching agent, which I assume in our condition would be gas oil, then you would have to take into consideration the market price or the price at which you might procure a supply of gas oil to be used as an enriching agent.

Commissioner Geiger: You mean by that that the artificial gas which you produce at 20 cents a thousand must be enriched in some way in addition to that 20 cents?

The Witness: Yes, sir.

Commissioner Geiger: You enrich it with your natural gas?

The Witness: Yes.

Commissioner Geiger: So that the 20 cents a thousand used is not the gas ready for distribution or consumption unless it is further enriched?

Mr. Hebel: No, sir.

Commissioner Geiger: It would have only how many B.t.u.?

The Witness: About 300 B.t.u.

Q. Continue with the next schedule?

A. Schedule 8 of the exhibit is a schedule of the steam generation cost showing the apportionment for the years 1927 and 1931. In other words, this statement shows the cost to the company for generating steam that is used in its operations.

Q. And that is a break-down of what items or figures [fol. 480] appearing on the main schedule Number 1?

A. That appears in gas produced and purchased item.

Q. That is a further breakdown of one of the items under gas produced and purchased?

A. Yes, sir.

Commissioner Geiger: You have already accounted in Schedule 7 for the total of the $174,000.00 in the year 1927? This is a further breakdown?

The Witness: Yes, sir.

Q. Well then, let me ask you, Mr. Pringle, that is a break-down of what item appearing on Schedule Number 7?

A. Steam generation apportionment account.

Q. And covers each of the years?

A. Yes, sir.

Q. All right.

A. Schedule Number 9 is a detailed statement of distribution expenses for the calendar years 1927 to '31, inclusive. The total distribution expenses as shown on Schedule 9 appears on Schedule Number 1 as distribution expenses for the years 1927, '28, '29, '30 and '31, and which is the detail of the amount shown on Schedule 1.

Q. Will you explain the credit item of duplicate distribution charges?

A. The amounts shown as duplicate distribution charges are credits given to distribution expenses on account of gas used by the company in its distribution operations.

Commissioner Geiger: You have one item on your sheet 9 that I don't quite understand, "Maintenance installations —customer's premises." Well, that is very small. Never mind that. "Work on customer's premises," what do you mean by that?

The Witness: Any work that we may be called on to do for the customer. In other words, we receive lots of orders [fol. 481] from customers that their gas supply is more or their appliances need adjustment or they probably haven't a free flow of gas or water in the lines, any number of com-

plaints; in fact, any complaints arising from the customer, the company attempts to overcome and the amount shown here represents the cost to the company for that work.

Commissioner Geiger: I notice in 1927 and 1928, substantially the same amount, it drops in 1929, 1930, 1931?

The Witness: I will say for your information on that 1930, we changed our classification of accounts and had a more detailed distribution of expenses. If you will note the year 1930, you will see an amount of 3573 for turn on and turn off meter expenses. You will not find that in the years '27, '28 and '29, because our classification for the years '27, '28 and '29 was not very elastic and all such expense was thrown in with "Work on customer's premises." In other words, your 1930 classification broke that account up more in detail. However, you will note the consistency of the total operation under "Distribution" for years 1927, '28, '29, '30 and '31, remained consistent.

Commissioner Geiger: Well, there is between '27 and '28, consistency and there is a different figure for '29, '30 and '31. For those last two years, you add the item of turn on and turn off, makes about the same as 1929. But isn't this $10,545.00 and $10,005.00 really your permanent improvement of your gas distribution plant that should go into capitalization rather than expense?

The Witness: Absolutely not, absolutely not. It is expense incurred for any work that we did on the customer's [fol. 482] premises, that of turning on gas, turning off the gas, installing or removing a meter, any work that we perform, strictly an operating expense.

Commissioner Geiger: Do you include carrying the pipe from the curbstone into the customer's cellar?

The Witness: We do not furnish any pipe to the customer. He owns the lines within his premises.

Commissioner Geiger: Who pays for putting it in?

The Witness: He does. It is his property. The only thing we own on the——

Commissioner Geiger: That doesn't appear on here at all?

The Witness: No, sir.

Commissioner Geiger: It is paid for when it is put in and it doesn't appear in either your capitalization or in your operating expenses?

The Witness: No, sir.

Commissioner Geiger: So that in addition to what the customer pays for the gas through the meter, he also pays for the connection from the main line to his cellar and the installation of the meter?

The Witness: We run the service line to the curb or property line, and from the curb or property line into the meter, it is his property. Then we own the meter and its connection. Then the line from the meter to the appliance is also owned by the customer.

Commissioner Geiger: I don't visualize how you could pay such an amount in any year for work on customer's premises, if it doesn't include the laying of the pipe. In-
[fol. 483] cludes just incidental work due to calls from the customer?

The Witness: Yes.

Commissioner Geiger: That something is wrong?

The Witness: Yes. Changing meters probably makes up the largest part of this amount.

Commissioner Geiger: Changing meters?

The Witness: Yes.

Commissioner Geiger: What, put in a new meter and take out the old meter?

The Witness: Yes.

Commissioner Geiger: Is that work properly charged to expenses, annual expenses? Isn't that improving your plant?

The Witness: Not at all. You capitalize a meter and its installation, that goes into the capital account.

Commissioner Geiger: When you changed the old meter and put in a new one, it goes into the expense account?

The Witness: Yes, sir.

Commissioner Geiger: That new meter replaces an old meter?

The Witness: Yes.

Commissioner Geiger: Why don't you put that into capital account?

The Witness: The new meter?

Commissioner Geiger: Yes.

The Witness: The meter is capitalized, the first installation, but I don't mean to say that all this amount is all meter installations. If you knew just the number of orders received by public utilities from the customer, you could [fol. 484] appreciate this expense, what it means to the company in answering all the calls received from the cus-

tomer for which we make no charge. We must stand ready at all times to render service, either night or day, and any call of any nature concerning the gas supply on his premises, we are obliged to go there and see that he has proper service at all times.

Commissioner Geiger: Of course, if called for, you could bring that item down further and show what this $10,000.00 is?

The Witness: Yes.

Q. Now, Schedule Number 10?

A. Schedule Number 10 is a detailed statement of commercial expenses charged to the Lima District operations for five calendar years, 1927 to 1931, inclusive, as appears on Schedule Number 1 of the exhibit as commercial expenses for the years 1927, '28, '29, '30 and '31.

Commissioner Geiger: Wait a minute. You could break that down, you have got supplies and expenses, that is rather uncertain, you can give a breakdown of that if called upon?

The Witness: Yes, sir.

Q. Are these headings, Mr. Pringle, as the headings for various accounts are stated in the uniform classification of accounts?

A. They are.

Q. And a uniform classification of accounts explains what items are to be put under each of these headings?

A. Yes, sir.

Q. And do you put your charges under these headings on the basis of the instructions in that classification of accounts?

A. Yes, sir.

[fol. 485] Q. All right, your next schedule?

A. Schedule Number 11 is a detailed statement of new business expenses charged to the Lima District, operations for the five calendar years 1927 to 1931, inclusive. The total new business expense as shown on this schedule Number 11 appears as new business expense in Schedule Number 1 of this exhibit for the years 1927, '28, '29, '30 and '31.

Q. And again is broken up according to classification of accounts?

A. Yes, sir.

Commissioner Bricker: Is that reflected in your increased sales?

The Witness: Yes, sir.

Commissioner Bricker: Did you have this new business expense prior to 1931?

The Witness: Yes, sir.

Commissioner Bricker: Have your sales been increasing from year to year?

The Witness: The industrial gas sales for the year 1927 was 9,941,000 cubic feet of gas. The industrial sales for the year 1931 was 32,320,000 in spite of business conditions. House heating sales was increased from 935,000 cubic feet in 1926, to 12,489,000 in the year 1930, gas used for heating homes. Those sales were increased through the efforts of the new business department.

Commissioner Geiger: Well, the thing we don't get quite clear in our minds, you have an expense here of getting new business, that is correct?

The Witness: Yes.

Commissioner Geiger: But the new business has shown [fol. 486] a loss all the time?

The Witness: No.

Commissioner Geiger: It has not?

The Witness: No.

Commissioner Geiger: Well, you are claiming that you can't make any money——

The Witness: Are you speaking of merchandise appliances? I am not referring to any merchandise sales, sales of appliances. That is true, that department has always lost money, but it is not given any consideration either indirectly or directly in this exhibit and this is our industrial department, new business department that goes out through canvassing and solicitation trying to increase our gas sales. For instance, a year or two ago after a long time of endeavor, we were able to put in some furnaces at the Lima Locomotive Works, Ohio Steel Foundry, hadn't been using gas only in small quantities, but through the efforts of the new business department, our engineers were able to——

Commissioner Geiger: Well, now, does that bring a profit to you in your operation?

The Witness: Yes.

Commissioner Geiger: Well, is it quite fair to charge to the domestic consumer the expense of getting new indus-

trial service? Should you not make the portion of that expense to your industrial service rather than to put it on to domestic service.

The Witness: It would be rather a difficult thing to segregate your customers and allocate your expenses to that particular class of customers, and if each class of customer [fol. 487] would be required to pay its proportionate share of the operating cost, there would be quite a difference in your set-up. The domestic customers are fortunate, especially during these present day conditions, by having a new business department that increases your industrial sales in spite of business conditions and a decrease in your domestic sales. I think it is very flattering that such figures or such sales as produced by your new business department is very flattering and certainly is justification for its existence when it brings your housekeeping load from 935,000 cubic feet, less than a million, up to 12,000,000 in the year 1930 in a period of four years. That alone is justification for the existence of that department. And then it takes your industrial sales and increases that from 9,900,000 in 1927, to 32,000,000 in 1931.

Commissioner Bricker: Well, now, Mr. Pringle, what I am interested in is the results to the company of this expenditure. Your Exhibit 1 or your sheet 1 shows for 1927, a growth of 492,000, for 1928, a growth of 511,000, a growth in 1929 of 511,000, and in 1930 back again less than in 1927 of 491,000, 1931 of 457,000. Now, was this increase in your industrial use and your increase in housekeeping use or load more than offset by the loss in domestic consumers?

The Witness: No.

Commissioner Bricker: Your growth then should reflect this expense and this increased consumption?

The Witness: By virtue of the fact that your domestic and other class consumers' use is more of a decrease than the amount of the increase of the industrial.

[fol. 488] Commissioner Bricker: That is what I was just asking you and you said no.

The Witness: In other words, if your industrial department or your new business department hadn't been as active as it were during the past three or four years, you would have had a further reduction in your gross revenue. If we could increase our sales to our domestic consumers in the

same ratio as our industrial and househeating sales, of course, the revenue would not have fallen.

Commissioner Bricker: Now, I note that a good bit of this new business expense was in demonstrations and home service canvassing and soliciting. Now that canvassing and soliciting is possibly on the industrial and househeating——

The Witness: Yes. You have to go around and give them all kinds of demonstrations and literature, personal contact. And of course, you can't land one of these customers your first contact with him, you have got to keep working on him, some times it is a year before we can land a customer.

Commissioner Bricker: That is what you set up in your valuation as the cost of attaching business?

The Witness: Well, that would be an item of cost, yes, beginning of a new company, yes.

Commissioner Geiger: Well now, that is just one thing that occurs to me. Here you have a specific item and then you have the general ten per cent for the valuation of your property for going concern value which consists of cost of attaching business and things of that sort. Now, aren't all these items really in the per cent on going concern value, aren't the same items you cover here specifically mentioned [fol. 489] in that??

The Witness: No.

Commissioner Geiger: All your cost of attaching business which you will put in as a part of your going concern value is in addition to this?

The Witness: As I understand, going concern value has not been given any consideration in the value of this company's property. When you speak of going concern value and the cost of attaching business, rather, at the time you are going to reproduce the company and start out new, right now, we have got to have customers, what it costs to have customers, what it cost to have customers. Now, we are looking at this company as an operating company, in operation, delivering service to the customer, and in order that we might continue to receive revenue from the customer, we have got to be on the alert at all times, especially at this day and time, to look for all the business that it can. If there was ever a time that a company needed a new business department, it has been during the present and the past two or three years. We have got to fight to keep what we have got and daily try to increase our gas sales to our customers.

Commissioner Geiger: Now, may I ask this, I don't want too long an explanation about it, demonstrations and home service, it is not a large item, we wouldn't inquire much about it, but are some portions of that for demonstrating things that you sell in your commercial department?

The Witness: No, sir. That is a separate and entire segregation of accounts.

Commissioner Geiger: You mean that you have got to [fol. 490] demonstrate to a person how to light a natural gas burner?

The Witness: In some instances, that is far-fetched, but in some instances you do find people that are so damned dumb, they can't light a gas light, but that isn't general.

Commissioner Geiger: Well, I wonder if it even calls for any item of expense at all. Isn't this a fact, that you are selling a range or stove, you are selling them equipment to use gas or a new gas burner in the furnace or something of that sort, you go out and demonstrate that, in setting up an appliance which will produce a larger consumption of gas, and it is really a commercial sale rather than a public utility sale?

The Witness: If you were demonstrating appliances sold by the merchandise department, yes, and that expense of demonstrating that particular appliance would be charged to the merchandise department. But all expenses as shown in this exhibit are expenses pertaining to our new business department which has nothing to do with domestic use, nothing to do with it, is a separate and distinct corporation.

Q. The new business item, then, if I understand you correctly, is the expense incurred in connection with your efforts to hold what business you have and get what new business you can?

A. Absolutely right.

Commissioner Bricker: Do you show a list of your meter losses to domestic consumers? Have you got a showing of the list of meter losses to domestic consumers?

The Witness: I haven't here, Mr. Bricker.

Commissioner Bricker: Has it been very large in the past two or three years?

[fol. 491] The Witness: I think in the last three or four years, we have probably lost around—oh, I will just make a guess, around six or seven hundred customers.

Commissioner Bricker: Does that make up any great domestic loss or is it due to a lessened consumption of those who actually do remain on the service?

The Witness: I don't think I quite understand your question, Mr. Bricker.

Commissioner Bricker: Is your greatest loss in domestic gas from those who have actually cut off their service or from the decreased use by those who remain?

The Witness: Oh, I think the decreased consumption, the people are attempting to economize.

Commission Geiger: But you have considerable decrease in consumption in the year 1931. Would you say that a considerable portion of that might be attributable to the fact of the mild winter?

The Witness: I would, because in our house heating sale, we sold two million cubic feet of gas less in '31 than we did in '30. Now, that is directly attributable to the weather condition. Our house heating sales fell down two million feet in '31 over '30.

Commissioner Geiger: That is due to climatic conditions or mild weather, mild winter.

The Witness: Absolutely, because we have the same customers on.

Commissioner Geiger: Yes, but they may be more economical.

Mr. Hebel: Commissioner Bricker, there is in the files a [fol. 492] statement, in the commission files, I mean, showing the meters in service for the years 1924 to '31, both inclusive.

Commissioner Bricker: Thank you very much.

Q. Now, your next schedule, Mr. Pringle?

A. Schedule 12 is the general and miscellaneous expenses charged to the Lima District operating during the five years, 1927 to 1931, and the totals shown on this schedule appear on Schedule Number 10, general and miscellaneous expenses, under the years 1927, '28, '29, '30 and '31.

Mr. Hebel: That is for all five years.

Commissioner Geiger: Now, you have here a schedule Number 12 that is headed "General and miscellaneous expenses." Then you go down and find another item, miscellaneous general expenses. This miscellaneous general expenses is part of general and miscellaneous expenses?

The Witness: Well, it could be called miscellaneous expenses. You have miscellaneous under commercial and you have miscellaneous expenses under each group of your accounts, but this is a miscellaneous general.

Q. But those are the sub-headings in the uniform classification of accounts?

A. Yes, sir.

Q. Your next schedule?

A. Schedule 13 is a statement of the Lima rate case expense for nine months of the year 1928 and the years 1929, 1930 and '31 and it shows the manner in which we have divided or allocated the expense over the five year period as previously stated. The amount shown on this schedule appears in the adjustment column on the schedules heretofore explained in this exhibit.

Q. And the item "Less amount written off", is to make [fol. 493] the corrections for the years when something was written off in expense in order to get the allocate portion of the rate case expense in each year's account?

A. That is true.

Commissioner Geiger: The largest item, as I see, is the valuation expense in 1929, $14,619.00; that was all incurred in that year?

The Witness: Yes, sir.

Commissioner Geiger: And by the employment of engineers?

The Witness: Yes, sir.

Commissioner Geiger: Was it done by your own people or whom?

The Witness: Engineers employed and by what employees of our company that assisted in a preparation of the valuation.

Commissioner Geiger: Well, if your own employees assisted, is that in that item?

The Witness: Yes, sir.

Commissioner Geiger: Well, is it deducted from the other account of expenses?

The Witness: Yes, sir.

Commissioner Geiger: If any employee is paid a certain salary or wage to do certain service or work for you and he puts some of his time in on this valuation expense, is that

a deduction from his general operation expense of your company of the amount that goes into this item?

The Witness: Well, in other words, he hands in the time ticket showing how his time was spent.

Commissioner Geiger: Properly allocated to whatever work he does?

[fol. 494] The Witness: That is true.

Q. Your next schedule, Mr. Pringle?

A. Schedule 14 is commercial expenses, giving effect to credits account of joint district expenses for the year ending December 31, 1931. The first column of this exhibit shows a total commercial expense of $20,209.18 and the various accounts were credited by $740.51 on account of expenses incurred in the Lima Office which were apportioned to the other operating districts. The net amount of $19,468.67 shown on this schedule 14 for the year 1931 appears on Schedule Number 1 of this exhibit.

Commissioner Geiger: Now, pardon me there, you show expenses transferred to other districts. You only have two items, general labor and supplies and expenses, making a total of $740.51; that is correct, isn't it?

The Witness: Yes, sir.

Commissioner Geiger: Now, how does it come that some of your bookkeeping expense and collections were not also charged to the other districts at the same time?

The Witness: For the reason that we maintained an office in each district in which we operate. This expense incurred in Lima, if you will read the note we have on this schedule, during the year——

Commissioner Geiger: Well, never mind. It is explained by the note?

The Witness: Yes, explained by the note on this page.

Q. Your next schedule, Mr. Pringle?

A. Schedule 15 is new business expenses showing the amount credited because of services apportioned and explained in the note.

[fol. 495] Q. That is, you mean the adjustments are self-explanatory upon reading the note?

A. Yes, and the net amount appears on Schedule Number 1 of this exhibit.

Q. Your next schedule?

A. Schedule 16 is general and miscellaneous expenses chargeable direct to the Lima district during the five years, 1927 to 1931.

Q. Now, will you explain the practice of the company in segregating its accounts as to the accounting method of handling these general and miscellaneous expenses? There are some of them that are chargeable direct and some of them that are allocable?

A. Yes.

Q. Now, will you explain under what circumstances you make such charges direct and under what circumstances you allocate them and in cases of allocation, the method of allocation?

A. Certain expenses of the company incurred in Lima are for the benefit of the company as a whole and are carried in what we call an apportionable account. At the end of each month, the expenses appearing in the apportionable account is allocated to each district on the basis of gross revenue. Certain other expenses are chargeable direct to the Lima district. I might illustrate that, if you care to have me do it. Take, for example, retainer that you might pay your attorney, that expense, the monthly retainer would be allocated to each of the districts. That is what we would call an apportionable expense. And on the other hand, assume that your attorney preformed some specific work in the Lima district concerning some Lima matter; his expense in that matter would be chargebale direct to Lima and have no connection with the other districts.

[fol. 496] Q. And this schedule 16 covers merely the general and miscellaneous expenses that are charged on the books directly to Lima?

A. Yes, sir.

Q. Without any necessity of allocations?

A. That is right.

Q. And covers the item for all five of the years?

A. Yes, sir.

Commissioner Geiger: Now, there is a little matter I don't like to pry into seriously, but I want to know about it. You have here "Chamber of Commerce Membership Dues", 1929, 1930, 1931. Now, as I understand that, the company subscribed to so many memberships for the Chamber of Commerce for the good of the city?

The Witness: Yes, sir.

Commissioner Geiger: And you charge it, however, into your rate expenses?

The Witness: Rate expenses?

Commissioner Geiger: It is a donation by the company, you do donate it, but you charge it back to the customer?

The Witness: It goes into our regular operating expense of the company.

Commissioner Geiger: And National and State Utility Association Dues. Now, those are dues that you pay to some organization that is interested in your general line of work?

The Witness: Yes, sir.

Commissioner Geiger: Really are for your own benefit, of course?

The Witness: Yes, sir.

Commissioner Geiger: And possibly might not be proper [fol. 497] to charge back to the consumer?

The Witness: Well, I don't know.

Commissioner Geiger: All right. Now, you have "Other Association Expenses", $446.62 in 1930, you say that was the city fund for any money the city was raising for general purposes?

The Witness: Well, for instance, we belong to the Oil and Gas Men's Association of the State of Ohio. That would fall in there.

Commissioner Geiger: Have you got any contributions to the Community Chest?

The Witness: Yes, that appears in there.

Commissioner Geiger: That is in there?

The Witness: Yes, sir.

Commissioner Geiger: That is, you make a contribution to it and then charge it back to the customer?

The Witness: Yes, sir.

Chairman Geiger: All right, not condemning that at all, because I have been on those committees and when the gas company comes in with a good subscription, we don't inquire whether it is going to be charged back.

The Witness: This year we weren't solicited locally.

Commissioner Geiger: Why?

The Witness: Because the State of Ohio compels us to contribute by enactment of law here.

Q. What is the extent of that compulsory contribution, is that a new tax law?

The Witness: The recent law passed by the Legislature of the State of Ohio increasing the excise tax of public [fol. 498] utilities one per cent. will cost us approximately $7500.00 more a year excise tax, and of that amount, approximately $5200.00 will be charged to our Lima district customers.

Q. In other words, your expenses will be increased by an additional tax of $5200.00?

A. In the Lima district.

Q. In the Lima district. And when did that tax go into effect?

A. It is in effect now, as I understand it, and will be for a period of five years.

Q. But is wasn't in effect during the year 1931?

A. It was not.

Q. Nor any year prior?

A. No, sir.

Commissioner Geiger: Part of it was in effect; only an increase, was it not?

The Witness: We had an excise tax, but the increase of one per cent——

Commissioner Geiger: What was it before, one and one half?

The Witness: 1.35 per cent. Now, it has gone to 2.35.

Chairman Hopple: What was the approximate number of your customers April 1st this year in the Lima District?

The Witness: Slightly over 9,100.

Q. And this $5200.00 that you mention as the tax for the Lima district resulting from this new law is the increase in the excise tax?

A. Yes.

Q. Your Schedule 16 in which you showed these direct general and miscellaneous expenses, where do those items appear on Schedule 1, are they a part of some larger item that appears on Schedule 1?

A. The direct expenses appearing on Schedule 16, to- [fol. 499] gether with the amounts shown on Schedule 17 as the Lima district proportion, will equal the amount shown as general and miscellaneous expense appearing on Schedule 1 of the Exhibit. In other words, Schedule 16

is the direct expense and Schedule 17 is the Lima proportion of the apportionable general expense.

Q. That is 17 and various exhibits following for various years?

A. Yes, sir.

Q. So that if you add the total shown in the column under 1927 on Schedule 16 and the total shown in the last column of Schedule 17, you will have the figure appearing on Schedule 1 for 1927 under the heading "General and Miscellaneous expense"?

A. Yes, sir.

Q. Now, will you explain Schedule 17?

A. Schedule 17 is general and miscellaneous expenses apportionable for the year ending December 31, 1927. In other words, during the year 1927, there was a total of $52,371.92 of general and miscellaneous expenses that were common to all districts, and after apportioning the expense as shown in that column, as explained by the notes, Lima district is charged with $35,688.84 of that year's general expense.

Q. And the note then, as I understand, explains the basis on which the apportionment is made?

A. Yes, sir.

Q. Now, Schedule 18?

A. Schedule 18 is the general and miscellaneous expenses apportionable for the year ending December 31, 1928. The amount apportioned to the Lima District is explained in the note appearing on this schedule.

Commissioner Bricker: What were the services rendered by the Midland Company, last item.

[fol. 500] The Witness: Midland Company is our parent company.

Commissioner Bricker: Yes, I know, but I just wondered——

The Witness: And if we call on them for any particular kind of service, we are billed for the actual services rendered. For instance, if we have a distribution problem on which we need some advice and instructions or something is over our heads, we can call on our parent company and they will send one of the engineers who is familiar with that particular kind of work to Lima or elsewhere and give us the benefit of his knowledge and experience in meeting the

problem, and we are charged for his time and expense for that particular work.

Commissioner Bricker: That is personal service rendered by the representatives of the company?

The Witness: Yes.

Commissioner Bricker: In whole? The whole amount is taken up in there, the whole amount is attributable to the personal services——

The Witness: In the Lima District.

Commissioner Bricker: Yes.

The Witness: Yes, sir.

Commissioner Bricker: On behalf of representatives of the parent company?

The Witness: Yes, sir.

Q. And are those functions which the West Ohio Gas Company would have to provide a personnel for if employees of the Midland Company did not perform those services?

A. It would be, yes.

Q. In general, what is the nature of the different pipes [fol. 501] of services that the Midland Company performs for the West Ohio?

A. The Midland Company renders secretarial accounting, engineering and other services to our company.

Commissioner Geiger: Do they bill you for those services rendered or do you pay a per cent?

The Witness: We are billed monthly for services actually rendered.

Commissioner Geiger: How long has the Lima Company been connected with this Midland Company?

The Witness: As I recall, it is somewhere around 1922.

Commissioner Geiger: Before that time, you could perform these services in your own company?

The Witness: At that time, we were controlled by the U. G. I. Company of Philadelphia who performed a like service from their Philadelphia office.

Commissioner Geiger: Well, just between us, the services that they perform are just simply services that anyone in your department and in your home company could well perform without this charge if there weren't this service offered to you by this company?

The Witness: No, sir.

Commissioner Geiger: How?

The Witness: No, sir. I just explained that if we had——

Commissioner Geiger: Now, what sort of engineering business is there in Lima that you haven't had for the last 40 years?

The Witness: That is true, but you appreciate the fact [fol. 502] that we can't run along every day without anything unusual happening or anything unusual coming up. For instance, we might have some production problem——

Commissioner Geiger: How many companies are controlled or are in the organization of the Midland United Company?

The Witness: I can't answer that offhand.

Commissioner Geiger: Are there ten, twenty, a hundred, five hundred?

The Witness: I suppose somewhere around eight or ten, to the best of my knowledge.

Commissioner Geiger: All of these different companies pay these like services?

The Witness: As far as I know, they do.

Commissioner Geiger: You don't know how much they total?

The Witness: Of the other companies?

Commissioner Geiger: Yes.

The Witness: No, sir, I have no idea.

Commissioner Geiger: All right.

Q. Do you know how the charge made by the Midland Company for its services to your company is determined?

A. As I understand it, the employees of Midland Company keep a time record sheet of the time they spend for the particular company and the company is billed accordingly.

Q. Purely on the basis of the time rendered for that service?

A. To that particular company, yes.

Commissioner Geiger: Who is it that owns your common stock?

The Witness: Midland Company.

[fol. 503] Commissioner Geiger: The Midland?

The Witness: Midland Mutual Company.

Commissioner Geiger: Called Midland United Company, is that right?

The Witness: Yes, sir.

Commissioner Geiger: Who owns their common stock?
The Witness: I couldn't tell you.
Commissioner Geiger: All right.

Q. Any work performed for your company by individuals who are officers of the Midland Company, there is no charge made for their services?

A. No charges at all for the executives of the Midland Company.

Q. And that is true of all the secretarial work that is performed by the secretary of the Midland Company who also is secretary of the West Ohio Gas Company?

A. That is true.

Q. And none of these charges are based on a percentage ratio?

A. None.

Q. And all are based on the actual cost to the Midland of the individuals performing the service?

A. Absolutely.

Q. All right, your next schedule, Schedule 18, is similar to 17 except that 18 is for the year 1928?

A. Yes, sir.

Q. Now, what about Schedule 19?

A. Schedule 19 is the same as Schedule 17 and 18 with the exception, it covers the year 1929.

Q. Let me ask you on this schedule, there is an item which I believe appears on each of the schedules, 17, 18, [fol. 504] 19, 20 and 21, "Duplicate miscellaneous charges" which is a red figure or a credit. Now, what is that item?

A. That is gas used by the company in its general department that is credited back to general and miscellaneous expenses.

Q. And that results in a reduction of the operating expenses charged the Lima district?

A. It does.

Q. By taking out that duplication?

A. Yes, sir.

Q. All right, now, Schedule 20?

A. Schedule 20 is the same as 17, 18 and 19 with the exception that it covers general and miscellaneous expenses apportionable for the year 1930.

Q. And Schedule 21?

A. And Schedule 21 is the same as the previous schedules mentioned, covers the general and miscellaneous expenses for the year 1931.

Mr. Hebel: That finishes the direct examination on this exhibit and I wonder what the procedure should be, whether the city desired to cross-examine on this exhibit before we proceed with others or——

Commissioner Bricker: What would be the desire of the city's attorney?

Mr. Light: May it please the Commission, the City would like to do some examining on this when they complete their direct examination and I would like to say this further to the Commission, there is a possibility that it may become necessary for the city to reserve some cross-examination, ask for a short adjournment to make an analysis and examination of these figures.

Commissioner Bricker: Then how many more exhibits have you to introduce?

[fol. 505] Mr. Hebel: I believe there are four more.

Commissioner Bricker: How long will that take?

Mr. Hebel: I think the four should take over an hour and a half possibly.

Commissioner Bricker: All right, we will adjourn this case then until 2:30.

Mr. Hebel: I wonder if before we adjourn, if I may formally offer in evidence Exhibit 104?

Commissioner Bricker: It may be admitted.

And thereupon the paper writing last above offered was introduced and admitted in evidence on behalf of the West Ohio Gas Company and is herewith submitted, marked Company's Exhibit Number 104.

And thereupon a recess was taken until 2:30 o'clock P. M. of same day, June 7, 1932.

[fol. 506] Tuesday Afternoon Session

June 7, 1932.

And also—

Frank L. Pringle, resuming the stand, continued his testimony as follows:

Cross-examined by Mr. Light:

Q. Mr. Pringle, you have been connected with the West Ohio Gas Company and its predecessors, you say, for some twenty, twenty-one years?

A. Yes, sir.

Q. Probably the oldest administrative officer in the company at this time?

A. Yes, sir.

Q. Highly familiar with its business and its ramifications?

A. I feel that I am.

Q. By the way, what was the gas rate when you first went with the company?

A. In the winter time we charged thirty cents for the first 30,000, 27½ cents for the next 30,000, and 22½ cents a thousand for all over 60,000. The summer rate we charged 33 cents straight per thousand.

Q. That was natural gas with a b. t. u. of approximately 1,000?

A. Yes, sir.

Q. What did you pay wholesale for your natural gas at that time?

A. In those days we were distributing gas on an agency basis. That is to say, the supply company furnished all the gas and we distributed it on a percentage basis of the gross receipts. They stood all unaccounted for gas and noncollectible bills and received their proportion of the [fol. 507] money actually collected.

Q. Can you tell us about what it was costing you wholesale?

A. We didn't buy it by meter measurement at all. In other words, the supply of the gas, we had no meter to measure the total quantity of the gas coming into the town, used all the gas necessary, read the customers' meters, computed the bills——

Q. Let me ask you this, what per cent of your gross receipts did you pay?

A. We got thirty-five per cent of the gross receipts.

Q. They received sixty-five?

A. Yes, sir.

Q. And you distributed it at 35 per cent of 30 cents?

A. Yes, sir.

Q. I wonder, in a general way, Mr. Pringle, whether as one familiar with this sort of business what has happened in this twenty years that has so increased this except the market appreciation of labor and material, has there anything else happened?

A. At the time we were distributing gas on a percentage basis our annual sales in the Lima district was more than a million cubic feet per year and natural gas was sold very cheaply and at that time people were very wasteful in its use and the supply was gradually being diminished. Then in after years the producing company insisted that we enter into a contract with them, buy gas on a wholesale basis, and as near as I remember our first contract was 40 cents a thousand cubic feet and the producing company, we had to pay from 40 up to the present rate of 50 cents per thousand cubic feet. The supply was gradually being diminished, we reached the point where we could not render [fol. 508] service to our customers in the city of Lima on account of the inadequacy of the supply of natural gas. We did not know from one day to the next whether we were to have any supply of natural gas. We attempted over night to store natural gas in the million-foot holder in Lima in order to have gas to send out to the people during the meal hours during the next day.

Q. There is at the present time an abundant supply of natural gas, isn't there?

A. So far as I know, yes.

Q. The shortage in natural gas became most acute about what year?

A. I would say around 1920, '21, thereabouts.

Q. The reason that the price has gone up, one of the reasons is because there was a shortage in the gas, as I understand you?

A. No, I didn't mean to give that impression.

Q. The West Ohio Gas Company serves some eleven towns?

A. Yes, sir.

Q. Will you name them, please, Mr. Pringle?

A. Yes, Lima——

Q. Now pardon me, will you name them and then distinguish which you supply natural gas to and which you supply this mixed gas?

A. We supply natural gas to Kenton, Cridersville, Wapakoneta, St. Marys and Celina. We supply manufactured gas to Lima, Delphos, Bluffton, Columbus Grove, Ottawa and Leipsic, Ohio.

Q. What, if any, of these last named towns have you added to your business since March 31, 1928?

A. Delphos, Bluffton, Columbus Grove, Ottawa and Leipsic had gas furnished to them by us for the first time on October 1st, 1930.

Q. What reduction have you made in your appraisement charged to the city of Lima by reason of adding these [fol. 509] cities onto your system?

A. As I remember, 15 per cent was deducted from the valuation.

Q. By whom?

A. By the Public Utilities Commission.

Q. For Delphos?

A. And the towns north.

Q. Are all these eleven towns charged the same rate at this time?

A. Four towns north, Bluffton, Columbus Grove, Ottawa and Leipsic, are charged the same price, yes.

Q. And the rate in the other towns?

A. Cridersville has the same rate as we have in Lima. Wapakoneta, St. Marys and Celina have the same rates. And Kenton has a different rate.

Q. Tell the Commission, Mr. Pringle, whether or not it isn't more expensive to furnish gas to a small community, speaking per consumer, than it is to the larger communities?

Mr. Hebel: Mr. Light, may I ask what the purpose of this line of cross-examination is? If the Commission please, it is obviously not cross-examination of any matters that have been inquired about, and has no connection, couldn't have, with any issue before the Commission as to these Lima rates. If we are going to be forced to try these cases by separate municipalities and test the fairness of the rate by the earnings in that municipality and property devoted to the service in that municipality, why certainly we ought to confine this record to questions that are relevant to the operations in that single municipality.

Commissioner Bricker: The allocation isn't material. The objection will be overruled. You may proceed.

Mr. Hebel: Exceptions.

(Question read.)

A. The gas rates in the communities are not decided nor determined by the size of the community. The gas rate [fol. 510] is determined by taking into consideration the amount of property or the amount of money invested in that particular community for rendering service and the expenses necessary for the operation of that investment and the rate may or may not be higher than a larger community.

Mr. Light: Read the question again.

(Question read.)

A. If I may get you to clarify, please, for my information, what you mean by expense?

Q. The cost of furnishing the gas to the consumer, operating expense.

A. I wouldn't say so, no.

Q. Do you know whether it is or not?

A. We have some smaller communities and it certainly doesn't cost as much per meter as it does in Lima. It all depends on the circumstances existing in that community.

Q. I am referring entirely to the operating expense, not the investment in an artificial plant and that sort of thing.

Mr. Hebel: Mr. Light, which item of operating expenses?

Mr. Light: All distributing costs after you leave the primary cost of productive labor and material out of it.

The Witness: I wouldn't say that it was or I wouldn't say that it wasn't. It depends on the circumstances and in what community you mean.

Q. You wouldn't say either way?

A. No, unless I knew definitely what community we had in mind.

Q. Will you take your Exhibit 104, Mr. Pringle, and do you have available your Company's Exhibit 103? Company's Exhibit 103 was prepared by you?

A. Yes, sir.

Q. Will you turn to page 1 of your Exhibit 104, taking [fol. 511] the years '27, '28, '29 and '30, and you do not have '31 in your Exhibit 103, your gross receipts in both

sheets are the same but in Exhibit 104, page 1, your net return is substantially lower than is shown in exhibit 103; that is true, isn't it, consistently?

A. 1927? Yes, sir.

Q. Tell the Commission what further deductions you have made from Exhibit 103 to arrive at the figures found in page 1 of Exhibit 104.

A. Exhibit 103, amortization of transmission lines was excluded and I do not recall but I feel rather confident that Exhibit 103 does not include any cost, any rate case expense such as is included in Exhibit 104.

Commissioner Geiger: Do you know what particular item it is? Call his attention to it directly.

Mr. Light: I do not.

Commissioner Geiger: You don't know what it is.

Q. The difference is approximately 20 to 25 thousand dollars each year?

A. Yes, I think so.

Q. The amortization and cost in the rate case would not equal that, would it?

A. I do not think——

Q. Make a note of that and let me ask you that later. Beginning with the year 1927 and on up and including '31 the number of your customers have been decreasing, has it not?

A. I think so, yes.

Q. That has been true since the establishment of the rate in 1925, hasn't it?

A. I don't think that is true. As I recall we haven't had a gradual decrease every year since 1925.

Q. Will you turn to your exhibit? You have it accurately [fol. 512] here somewhere.

A. The number of customers?

Q. You have gradually lost customers each year since '27 up until now, haven't you, that is to say, you had less customers in '28 than you had in '27, less in '29 than you had in '28, and so forth up until the present year?

A. I think that is true of the last three years.

Q. That is true of the last five years?

A. I won't say about '25 and '26.

Mr. Hebel: There is, as I stated this morning, a document in the files on that. I don't know what it shows.

Q. And the amount of gas you have sold has likewise diminished?

A. Yes.

Q. That is correct, isn't it?

A. Yes, sir.

Q. Going again, Mr. Pringle, to page 1 of Exhibit 104——

A. May I correct the last statement? 1927, Lima, we sold 382 million; the year 1928 we sold 404 million, an increase of 22 million in 1928 over 1927. 1929 we sold 408 million, an increase over 1928. We had a decrease in 1930. However, that was more than we sold by 14 million over the year 1927. 1931 we sold 387 million, which is a decrease over 1930 but an increase over the year 1927.

Q. Two less customers?

A. Well I don't remember the number of customers.

Q. The population of Lima has remained approximately stationary since 1920, hasn't it?

A. I wouldn't say so. There have quite a number of people left the city of Lima.

Q. I am thinking of the '20 and '30 Federal Census Report.

A. According to the census reports, yes, sir.

Q. You have some more accurate information than that? [fol. 513] A. No. I know in the census report we have girls that work for us that live outside of Lima included in the Lima census report.

Q. Gon to your page 1 of Exhibit 104, taking up your item of total cost of operation, 1931, $377,000, which is a slight decrease from some of the other years, will you point out in your exhibit the major items making up the reduction between '31 and '30?

A. $10,000 in the cost of gas produced.

Q. How did that come about, produced less gas?

A. Yes.

Q. All right.

A. And reduction in commercial expenses, a reduction in new business expenses, reduction in general and miscellaneous expenses.

Q. How much was the reduction in new business expenses?

A. $2,693.

Q. What page is that?

A. Page 1.

Q. What page is it broken up in?

A. Which, commercial expense?

Q. Yes. Well, I guess I have it here myself. Now where in your set-up, Mr. Pringle, have you taken into consideration the general reduction of the cost of all basic commodities in the last five years?

A. Any reduction in materials, supplies or labor incidental to the operation of our business is reflected of course through our operating expenses. It is true that food, clothing and shelter has reduced, but unfortunately we do not use any of those in our business. There has been some minor deduction in material cost but the only material that we are using at this time is in our ordinary and necessary conducting of our business and the only time that we use [fol. 514] any great quantity of material would be when cities are engaged in paving programs that would require an enormous amount of pipe and fittings. Therefore any reduction in pipe and fittings is minor as far as our company is concerned, as our purchase has been negligible and only in quantity that is necessary for carrying on our business. And as far as the prevailing labor rate is concerned, we do not employ any extra labor only when we have to perform some extraordinary work such as street main work and so forth. The men we have on our payroll are men that have been with our company for years at stipulated salaries. Therefore we have not been able to benefit by any reduction in labor costs. It might be said, "Why, why don't you hire some cheap help?" but we rather hesitate to send an inexperienced man into your home, Mr. Light, to change a gas meter, he might blow up the premises, nor neither would we put an inexperienced man in our manufacturing plant to make gas. Our men must be experienced with the ordinary and necessary conduct of our business.

Q. Mr. Pringle, you will immediately perceive that practically every customer you have, his income has decreased?

A. Practically so.

Q. But you think that that customer should carry your expenses as they were five years ago?

A. At the same time during the war all of our customers' incomes were decidedly increased and our utility continued to charge the price that was fixed by orders of the Commission and we did not increase our price of our product,

yet we had to pay increased cost for all materials and supplies and labor and everything else that went into our [fol. 515] business.

Q. During the period immediately before the war and immediately after the war you tripled your price, didn't you, Mr. Pringle, from 30 and 35 cents up to $1.25?

A. The basis of operations was entirely different.

Q. Will you turn to page 12 of your Exhibit 104? I will ask you whether or not your administrative salaries haven't been increased since 1927?

A. No, sir, they have not.

Q. I find 1927, administrative salary, $9,953, and 1932, $11,561.

A. That is true, you do. For your information, part of my salar yat one time was charged to commercial expenses. Now since we have adopted a new classification of accounts we charge all administrative salaries under that account under general. In other words, my salary, for example, used to be distributed under different departments. Our new classification provides that it all be charged under administrative salaries. That is the reason it appears of a larger amount in those particular years you have mentioned.

Q. That is what makes the difference?

A. Yes.

Q. Was your salary reduced about $3,000 between '30 and '31?

A. My salary was reduced 10 per cent on the first of April this year.

Q. That isn't what I asked you.

A. I beg your pardon.

Q. Was it reduced between '30 and '31, a difference there of some $3,000?

A. The last three or four years up until the middle of last year there was no change in our administrative salaries at all. The reason the amounts appear different in each of those years is on account of the distribution of the salary to the several accounts.

[fol. 516] Q. The difference in your cost from 1927 to that in 1931 doesn't result from any reduction or curtailment of any expense, does it, that is made up by the amount of gas that you purchased the year before and that sort of thing?

A. Are you asking about administrative salaries now?

Q. There has been no substantial change in your operating or your entire expense in the last five years and you have not taken into consideration any reduction by reason of economic conditions?

A. Well for your information the first four months of 1932——

Q. I am not talking about that.

A. You asked me any time.

Q. I can only go as far as the exhibit I have before me.

A. Well our expenses last year were reduced 9.02 per cent.

Q. And $10,000 of that was because you didn't buy that much gas?

A. No, I wouldn't say that.

Q. Isn't that what you said a while ago?

A. No, you were talking about production expense at that time.

Q. I was talking about page 1 of your exhibit.

A. You were asking about page 1.

Q. I asked you where you got the difference between $389,000 and $377,000, a difference of $12,000, and you said $10,000 of that was because you didn't buy within $10,000 as much gas; is that right or not?

A. That item is right. Our distribution expense increased in 1931 against 1930. 1931 commercial expense decreased over 1930. New business expense decreased in 1931 over 1930.

Q. Now wait just a minute. You said you changed your salary from one item to another here. That would make a [fol. 517] reduction on some of these items, wouldn't it? Which ones did you take it from and which ones did you add it to?

A. I don't just quite get your question.

Q. You explained a moment ago that the reason that your salary, on page 12 I think it was, had been increased was because you took your salary off of one item and placed it on another, that would make one decrease and the other increase as I understand it. Which two are they?

A. As I explained, part of my salary, for example, prior to 1930, was charged to commercial expense.

Q. Let me ask you again, Mr. Pringle, taking the two years 1930 and 1931, there was no substantial reduction in your total cost of operation except $10,000 which you saved because you didn't buy as much gas?

A. Net reduction——

Q. I just ask you this, Mr. Pringle, in round figures in 1930 it was $389,000 and in 1931 it was $377,000, which was $12,000 less, and $10,000 is because you did not buy as much gas; that is right, isn't it?

A. Yes.

Q. And there was $2,000 some place else?

A. Increase and decrease in each of the accounts, net $12,000 in the year.

Q. And $10,000 of it was gas?

A. Yes.

Q. And these other figures were changed around because you changed your system of bookkeeping?

A. No.

Q. This exhibit 104, how much of this is a theoretical set-up and how much is an actual set-up off of your books?

A. As I explained this morning, the first column in the exhibit is as it appears on the records of the company.

Q. With the exception of the column identified as adjust-
[fol. 518] ments it is all from the books and correct?

A. Yes, sir.

Q. And as shown by your books?

A. Yes, sir.

Q. Taken from them?

A. Yes, sir.

Q. This amortization item came about because in 1924 there was some hope that you would get gas from the Coldwater field and you didn't propose to use this line over to Harrod or wherever it goes to?

A. No I don't think that—it first had its inception——

Q. Do you have the copy of the order?

A. Yes. But the line, it was determined at that time that natural gas supply will have become exhausted and that line would be of no value as far as the transmission of natural gas is concerned and it was estimated at that time it would be a ten-year period and the Commission found that the value of that line, less its then salvage value, should be amortized over a 10-year period in a four per cent sinking fund, and had no connection with Coldwater or any other field than the field from which we were served at that time.

Q. And that ten years will be up in two years. You haven't the slightest intention of abandoning the use of it?

A. I couldn't answer that at this time.

Q. You are familiar with the business of your company?

A. Yes, but I can't foresee tomorrow. I wish that I could.

Q. Well there is nothing to make you think you will abandon it any more than you will abandon your office building?

A. There is nothing to make me think that we wouldn't.

Q. Or that you would?

A. Would or wouldn't at this time.

Q. You know no reason why you won't continue as you at this time do?

A. No, I don't at this time. It all depends on the con-

[fol. 519] tract we might negotiate.

Q. Have you a copy of that contract here?

Mr. Bentley: That is in the record here, Mr. Light.

Mr. Light: Can't I ask him if he has a copy?

The Witness: I haven't any copy with me, no.

Q. That contract is with the Ohio Fuel?

A. With the Ohio Fuel Gas Company, yes, sir.

Q. And they are in the business of selling gas?

A. Producing and distributing gas in the state of Ohio.

Q. A public utility?

A. Yes, sir.

Q. How many househeating customers do you have now?

A. As near as I remember, it is about twenty-eight.

Q. Twenty-eight. How many did you have in '30?

A. Approximately the same number.

Q. How many in '29?

A. Well I can't give you that. 1926, they increased up to about twenty-eight.

Q. How many did you have in '26?

A. I can't give you the exact figures.

Q. About how many? Could you find out?

A. I would be glad to furnish you the information.

Q. How many industrial users have you?

A. My answer will be the same on that. I can give you the number each year from our records in the office.

Q. How many do you have now?

A. I can't answer that offhand.

Q. Will you get that?

A. Yes, sir. You want it for each year?

Q. Yes. Turning to page 3 of your Exhibit No. 104, Mr. Pringle, retirement allowance, you carry that in your books

[fol. 520] that way?

A. Yes, sir.

Q. Does that include any items of maintenance?

A. No, sir.

Q. Purely a theoretical depreciation?

A. That is the amount established by the Public Utilities Commission of Ohio in their order 179.

Q. I want to ask you, Mr. Pringle, whether or not it is not a fact your experience—that is on a basis of 3 per cent?

A. Yes.

Q. That your experience is approximately one per cent?

A. I can't answer that. I haven't made any depreciation study.

Q. You wouldn't say yes or no to that?

A. No, I wouldn't answer at all.

Q. Is that figure based on say, that transmission line?

A. No, sir.

Q. The transmission line is not in there?

A. No, sir.

Q. That is thirty-three years old now, isn't it?

A. The transmission line is in the amortization.

Q. I asked you if it is thirty-three years old.

A. I can't answer that.

Mr. Hebel: Mr. Light, what do you mean by experience?

Mr. Light: What it actually cost them to replace.

Q. The company has been in business some forty or forty-five years, hasn't it, Frank?

A. Forty years, yes.

Q. Your average receipts from the sale of your gas is approximately $1.25 for every thousand feet you sell; that is correct, isn't it?

A. That is very close to it, yes.

Q. For all practical purposes that is correct?

A. Yes.

Q. You are charging your customers with the expense of this action before the Commission to the extent of some [fol. 521] $33,000?

A. Yes, sir.

Q. As I understand, all of the items you have included here in your exhibit 104 are items which you think are properly chargeable to your customers?

A. Yes, sir.

Q. That is being charged because you did not accept the rate fixed by your customers through their city administration?

A. Under the classification of accounts adopted by the Public Utilities Commission of Ohio it provides that expense for defense or prosecution——

Q. I didn't ask you that, Mr. Pringle.

A. I am trying to answer it.

Q. Just answer it yes or no.

A. Will you state the question over?

(Question read as follows: That is being charged because you did not accept the rate fixed by your customers through their city administration?)

A. Quite naturally we did not accept the ordinance and the expenses incurred——

Q. You have never had any experience under these rates provided for in the ordinance, have you?

A. No, sir.

Q. You do not know whether that ordinance would operate profitably or unprofitably to your company?

A. I have made some computation along that line.

Q. Naturally you recognize the economic principle that the less the cost of any commodity the more can be sold?

A. That is true.

Q. You have never had any experience in recent years following these rates as fixed by the city, so that you do not know whether you could operate profitably or not under [fol. 522] them?

A. We could not operate under the ordinance. It wouldn't provide operating expenses, let alone any return on the investment.

Q. You don't know that, do you, Mr. Pringle?

A. I have stated a while ago I have made some calculations.

Q. Well you would have to make some theoretical calculations?

A. Well I will answer as long as I can't theorize to the extent you would like me to I can't answer your question.

Q. So you don't know, you couldn't possibly know?

A. I could approximate it.

Q. You wouldn't know until you try it?

A. I would have an awful good knowledge. When we aren't making an earning at a decidedly higher rate, com-

mon sense tells us we wouldn't make a return on an ordinance which provides a much lower rate.

Q. Why not?

Mr. Hebel: I want to object to this line of questions. This certainly is filling up the record with something that hasn't any bearing on this exhibit.

Commissioner Bricker: Objection overruled.

Mr. Hebel: Exception.

Q. Suppose we double your present rate, would you still make more money?

A. Our present rate?

Q. Yes.

A. We wouldn't accept it.

Q. On your basis of thinking and reasoning, the more you charge the more money you make, is that it?

A. I didn't say that, Mr. Light.

Mr. Hebel: I presume that exception and ruling will [fol. 523] stand to each and every question along this line without repetition?

Commissioner Bricker: Oh yes. Exceptions are saved by your application for a rehearing anyway.

Q. How long have you had this New Business department?

A. Several years.

Q. And their business is the attaching of house heating and industrial——

A. Generally promote the sales of gas.

Q. I understood you this morning to say their business was especially the matter of heating houses and——

A. That is primarily their function, yes.

Q. When you furnish us the information as to the number of customers for the last five years, heating houses and the number of industrial customers, will you also furnish the amount of gas furnished and what price do you sell it at?

A. House heating we have a rate, first 1,000 cubic feet or less, $3.00, and after that 70 cents a thousand.

Q. The first 1,000 feet——

A. Or less, $3.00, and all gas used in excess of 1,000 at 70 cents a thousand.

Q. That is, if I use 10,000 you would charge me $3.00 for the first thousand?

A. Yes, sir.

Q. As a minimum?

A. Yes, sir.

Q. That pays for my first thousand feet of gas?

A. Yes, sir.

Q. And your industrial rate?

A. The same as the domestic rate.

Q. 70 cents?

A. 75 cents over 25,000.

Commissioner Bricker: Those rates are all set up in the schedule which was put into effect by the Commission in [fol. 524] Order 179?

The Witness: With the exception of the house heating rate and there is a supplemental schedule filed with the Commission on that.

Commissioner Bricker: Was it protested in any way?

The Witness: No, sir. It was decreasing gas there to customers for househeating purposes.

Commissioner Bricker: Not involved in this controversy at all?

The Witness: No, sir.

Commissioner Bricker: And your industrial service is under your regular rate?

The Witness: Under the tariff, yes, sir.

Q. Will you go to page 9 of Exhibit 104? I assume that your item of pumping which was doubled between '27 and '31 comes about from some change in your bookkeeping method?

A. No, sir, we were not supplying gas to Delphos and the northern towns until 1930.

Q. That $4,000, approximately is brought about by pumping gas to Delphos?

A. And we have to exhaust gas from the Lima district yet.

Q. What is it?

A. On the sheets 6 and 5 we give credit there for the amount, pumping gas to Delphos.

Q. Where is that?

A. An adjustment column on page 5, an amount of $157.98 and on page 6 an amount of $519.50.

Q. Is that all?

A. Under Adjustment column.

Q. Is that all?

A. Yes, sir.

Q. That wouldn't explain $4,000, would it?

A. If you read the note under 3, notes and comments [fol. 525] there on the right hand side of page 5, note 3 on page 5, deduction of $157.98 made to the Lima District distribution expense, compensation——

Q. You are reading 3?

A. Yes.

Q. You don't need to read it. I can read it. Well that doesn't explain the difference of $4,000.

A. I don't know what you mean by a difference of $4,000.

Q. You jump from $3,700 up to $7,600 in pumping expense, and I asked you what caused it and you said pumping gas to Delphos.

A. What year is that, please?

Q. I was going from 1927 to 1931, page 9, please.

A. In 1927 pumping expense was $3,797.57, and 1931 was $7,627.96.

Q. I understood you to say that was brought about by pumping gas to Delphos.

A. No, we pumped gas in the Lima district, certain expense of this applicable to Lima, from the operating wells to the compressors. We give credit to the Lima district for pumping gas to the towns north and to Delphos as explained by those notes there on page 5 and 6.

Q. Can you tell me the reason for increasing, doubling that?

A. Quantity of gas I assume helped.

Q. To other towns?

A. No, sir, in the Lima district.

Q. In the city of Lima?

A. Yes, sir.

Commissioner Geiger: Why do you have to pump the gas in the city of Lima?

The Witness: From your plant, compressor.

Commissioner Geiger: Don't you have a tank or something that gives you pressure?

The Witness: Yes, sir.

Q. You didn't pump any — gas in '31 than you did in [fol. 526] '27, did you, in Lima district?

A. I can't answer that unless I get the gas statistics.

Q. You didn't sell any appreciable, any great quantity more in '31 than you did in '27, did you?

A. Just a minute please.

Q. I don't mean the exact figures, they are approximately the same, aren't they?

A. About 5 million difference of gas sold.

Q. Would that cost $4,000?

A. It would increase some the cost, but I couldn't say from here unless I would examine the records just exactly what made that up.

Q. What is your daily consumption in the Lima district?

A. I don't know.

Q. Approximately a million, isn't it?

A. If you divide thirty days into the total sales, yes.

Q. That would be four days pumping?

A. We have a witness here who can give you all about plant production. I am not an engineer, Mr. Light, I can't get into the ramifications——

Q. You say it cost about $10,000 a year to visit persons on their premises and satisfy them because they are complaining or something or other?

A. No, sir, I didn't say that, Mr. Light.

Q. Either that or the turning on or off of meters?

A. I said all the work that the company performed on the customers' premises in the year '27——

Q. What are some of the things you do on the customers' premises, Mr. Pringle?

A. Re-set and remove meters, adjust appliances, find out whether they have a free flow of gas, the service is good, high bill complaints, investigations, surveys, some of the things we do.

[fol. 527] Q. Does that cost $10,000 a year?

A. In 1927 it did, against $3,000 in 1931.

Q. That isn't there, is it, Mr. Pringle, because if you add the two items together, after you separate them you will have about 7,000, won't you, instead of 3,000?

A. An average over this five year period is around $5,000.

Q. Well the $10,000 includes many, many vis-ts to the homes of customers, doesn't it?

A. Every visit to the customers' premises.

Q. I say many visits. You can make a great many visits to the homes of your customers for $10,000, can't you?

A. It isn't just a visit. It isn't just going and knocking on the door and going in there. It is the labor and material involved.

Q. Do you furnish material on customers' premises?

A. We go to your house to install a meter and we find a line open, we simply put a plug in the line or a cap on it as the case may be, there is material involved in some of this, minor material.

Q. That would be a tremendously minor affair, a cap or something like that?

A. It would, but you just asked me if we furnish material and I am just trying to supply it by using that as an example.

Q. Some of that expense is brought about by some of your stupid customers, I believe you said?

A. Well I used the expression "damn", and I assume that I should apologize to the Commission.

Q. I was thinking of the word "dumb".

A. I used them both, I think, I don't know which I used first.

Q. And you think your other customers should be charged [fol. 528] up with the expense because you have trouble with your stupid customers?

A. We do not make any charge only as the expense is created by the customer. None of this is done arbitrarily. We have time tickets and the man is——

Q. Please answer my question. You can answer this yes or no. You charge your good customers up with the expense your stupid customers cause you? Yes or no.

A. I can't answer it in that way.

Q. Well do you or don't you?

A. If you will permit me to answer in my way I will answer it.

Commissioner Bricker: Answer yes or no and then explain.

The Witness: No.

Commissioner Bricker: Now you may explain.

The Witness: The expenses are made regardless of whether the person is stupid or brilliant.

Chairman Hopple: A college professor might leave the cap off of his gas pipe?

The Witness: Yes. Of course I can't argue these things. I can only answer them in my way.

Chairman Hopple: And you have an expense of $10,000 for that purpose?

The Witness: 1927, yes.

Chairman Hopple: And you had approximately 10,000 customers?

The Witness: Yes, sir.

Chairman Hopple: An average of about a dollar a customer per year?

The Witness: Yes, sir.

Chairman Hopple: I think sufficient time has been spent [fol. 529] on that point.

Q. You have a retail business selling gas appliances?

A. Yes, sir.

Q. Do all of your employees engaged in that business work separately and distinctly from all the rest of the business?

A. Yes, sir.

Q. None of them do any other kind of business except the retail of appliances?

A. Well, some exceptions, yes, the fitters that might connect up appliances——

Q. You, in making many visits to the many homes of your customers in Lima, the employees you go to these homes have nothing to do with the encouragement of the sale of your appliances?

A. We have salesmen employed in the merchandise department for solicitation of appliance sale.

Q. I am talking about the expense of $10,000 visiting homes.

A. The expense of $10,000 has nothing whatsoever to do with the merchandising department.

Q. And they are not encouraging the sale of your appliances or anything, these people that go to these various homes?

A. Not to my knowledge.

Q. They know what you sell?

A. They don't go there for that purpose.

Q. No, but they do know that you sell appliances?

A. Certainly.

Commissioner Geiger: Well, do you think these expenses on the homes of the consumer are continuous or are they incidental to attaching them as a customer?

The Witness: No, sir.

Commissioner Geiger: There is a drop off, a considerable [fol. 530] drop off.

The Witness: You always had these expenses and you always will.

Commissioner Geiger: You had much less expense in the last few years than you had before.

The Witness: A great deal depends on the number of calls you receive from your customers.

Q. It is also your theory of this matter that your customers should pay your constributions to the Chamber of Commerce and your contributions to the Community Chest, Association dues, and all that, you think, should be charged to the customers?

A. Yes, sir.

Q. And you have set that up in that item here?

A. Yes, sir.

Q. All your taxes and so forth?

A. Yes, sir.

Q. That is, you pay no taxes, you simply collect taxes from your customers and pass them on to the public?

A. If we pay you taxes, you say?

Q. I say you do not pay any taxes. You simply collect it from the customer?

A. In one sense we act as the agent for the county treasurer, yes, sir.

Q. You are a tax collector?

A. Yes, sir.

Mr. Marshall: Your Honor, I think that is a misnomer, and it is a mis-statement in the record. That is not so. Any utility is taxed, we all know that, and it isn't a fair statement to say that they are an agent for collecting that tax.

Commissioner Bricker: The law allows them to do it, no reflection upon it, we have got to allow that.

[fol. 531] Mr. Marshall: That might mislead a court that they don't pay taxes, that they are the agents. They don't collect as the agent from the consumer.

Commissioner Bricker: I think everybody understands that. If there is any misunderstanding about it, they simply collect it, it has got to be allowed, it is the first thing that has got to be allowed by this Commission as an operating expense. There is some question, I might say frankly here.

I wouldn't want the record to show that what I have said would also include contributions, there is now a hearing going on before the Interstate Commerce Commission of a very extensive character with regard to the proper handling of contributions and the New York Commission has entered into an investigation on the motion of Mr. Maltby, one of the members of the Commission, on that very same question. It is controverted at this time what the attitude of regulatory bodies should be towards contributions for charitable purposes, chambers of commerce, business organizations and associations in the promotion of the business in which the utility is engaged.

Mr. Marshall: I might say that last Friday night at midnight the United States senate passed the Act in relation to Electric Power, said that the company should charge that sales tax, charge that much in addition to the cost.

Commissioner Bricker: I presume that would go right on the bill on top of the schedule that is on file here with the Commission.

Mr. Marshall: There the utility is the agent of the customer to collect that governmental tax.

Commissioner Bricker: You mean the agent of the Government?

[fol. 532] Mr. Marshall: Surely.

Commissioner Bricker: Purely the agent in that case I think.

Mr. Marshall: This isn't so here, we are taxed, our excise tax is taxed against the utility.

Commissioner Bricker: And allowed as an expense entering into your rate case. I think that is clear.

Q. Page 12, third item from the bottom, Mr. Pringle, tell the Commission what that item, Stock and Bond Expense, is.

A. The expenses appearing as stock and bond expense on schedule 12 of the exhibit is the expense of the company incidental to the handling of its stocks and bonds, charges incurred by its transfer agents and its trustee under the general mortgage.

Q. How many other stockholders do you have in addition to the Midland?

A. How many preferred stockholders do we have?

Q. That is preferred stockholders?

A. About 252.

Q. That is doubled in the last five years?

A. I think so.

Q. Taking the next item, Midland Company service, will you produce later invoices say for the year 1931, you have twelve months involved making up an item of $3,617.58?

A. Yes, sir.

Q. Will you furnish those invoices? You have the invoices?

A. We will be glad to let you have copies of them. We can't let the originals get out of our office.

Q. Will you make copies?

A. Yes, sir.

[fol. 533] Q. From pages 17 on in your Exhibit 104, at least on several pages, you have used as the figure for allocation a per cent based on gross receipts?

A. Yes, sir.

Q. Rather than the actual expense experience at each point?

A. Rather than what?

Q. Expense?

A. As I explained this morning, we have some general expenses charged direct to the operating district and in addition to the direct expense we have the apportionable—

Q. I didn't ask you that. I say you used the gross receipts to arrive at a per cent of allocation rather than using any item of expense? You can say yes or no to that.

A. Yes, we used it, certainly.

Q. The Midland, you say, owns the common or voting stock in some eight or ten utilities, including the West Ohio Gas Company?

A. I assume they do.

Q. Do they have any other business except the owning of this stock?

A. Do they have any other business? I don't understand you.

Q. Are they engaged in any other business except the ownership of this common stock? Do they have any other assets?

A. I couldn't answer that.

Commissioner Geiger: Well if that were true, and that is all there were, why would they furnish you service for

which they made a charge to you if they are only a holding company?

The Witness: Well they have the control of these companies by virtue of the stock ownership and of course they have an office to maintain in Chicago and they have a staff, and I can't give you the source of revenue to the parent [fol. 534] company, I am not familiar with its interior workings to know from just what sources comes their revenue.

Mr. Light: That is all at this time.

Redirect examination.

By Mr. Hebel:

Q. Mr. Pringle, in your capacity as an officer of the company do you have anything to do with determining the kind of gas that is served, whether it is manufactured or natural or the mixture of the gas?

A. No, sir.

Q. Anything to do with any of those problems?

A. No, sir.

Q. In your capacity as comptroller or in your other duties for the company do you have anything to do with making the contracts in reference to the purchase of gas?

A. No, sir.

Q. Or in negotiating for those contracts?

A. No, sir.

Q. Or do you have anything whatsoever to do with that phase of the business?

A. I do not.

Q. Have you made any study or investigation as to the availability of natural gas supply?

A. Prior to entering into the present contract with the Ohio Fuel Gas Company our company wrote several letters to the municipalities in which we operate and advised them that we were on the market for a certain natural gas supply. We stated what our requirements would be for a year and asked those municipal authorities if they could advise us as to any available natural gas supply that we might contract for, which we would give consideration prior to our negotiations with the Ohio Fuel Gas [fol. 535] Company. We also wrote to two or three of the

larger companies in the state of Ohio inquiring as to whether or not——

Mr. Light: May I inquire what the question is?

(Question read.)

Q. I will ask you whether you wrote those letters, whether that was part of your duties?

A. No, I didn't write them personally.

Q. And have you made any investigation since, or is it a part of your duty with the company to make an investigation as to whether gas is available now from any other source?

A. No, sir, it is not.

Q. This stock and bond expense that Mr. Light inquired about and appears on the general and miscellaneous expense item, that has nothing to do with the issuance and sale of the securities in the initial instance, has it?

A. It does not.

Q. That is the annual expense that the company has in connection with its outstanding mortgage and the payment of dividends and interest?

A. Yes, sir.

Commissioner Geiger: You buy your gas from the Ohio Fuel Gas Company?

The Witness: Yes, sir.

Commissioner Geiger: At fifty-five cents wholesale?

The Witness: Yes sir.

Commissioner Geiger: Where is that delivered?

The Witness: Lima. We have a meter on East Fourth Street at the corporation limit of the city.

Commissioner Geiger: That is delivered there at that price?

[fol. 536] The Witness: Yes, sir.

Commissioner Geiger: Well then, don't you have a transportation line from Kenton over?

The Witness: Yes, sir.

Commissioner Geiger: Well that is in your regular expenses, isn't it?

The Witness: Yes, sir.

Commissioner Geiger: Operation of that line?

The Witness: Yes, sir.

Commissioner Geiger: Gas delivered to you at your own gateway at fifty-five cents in the city of Lima, why should you add any cost of transportation from Kenton over?

The Witness: In the contract at fifty-five cents they maintain the transmission line, they wanted to have that line, which is a stretch of some twenty-eight miles, under their supervision, and the gate price is fifty-five cents and they maintain the line during the term of the price.

Commissioner Geiger: Their gate price is fifty-five cents and for that fifty-five cents they maintain the line, they don't charge you fifty-five cents plus the maintenance of the line?

The Witness: No, sir, they do not.

Commissioner Geiger: Well then if they deliver gas to you at the gate at fifty-five cents, what has this transportation over this line from Kenton to Lima to do with the rate that you are to charge?

The Witness: Because it is a unit of property of the company used and useful in the conduct of its business. In other words if the gas was measured at the other end of the [fol. 537] line say near Kenton, we would have to maintain the line in that case and we would have an item of expense in here for transmission expense, operation and maintenance.

Commissioner Geiger: But you have a transmission expense?

The Witness: But there is no expense in this exhibit for the transmission line operation.

Commissioner Geiger: There is amortization.

The Witness: That is the annual charge. In other words, if there isn't amortization there is depreciation on the line. If amortization was taken off, why, depreciation would be substituted and vice versa.

Commissioner Geiger: I don't get it quite clear why you should have the benefit of that rather high rate of fifty-five cents at Lima and in addition to that make a charge for maintaining that line which that company maintains, operates, for the fifty-five cents that they get.

The Witness: Well I will say that we did not submit to the fifty-five cents graciously, we endeavored to get it at a lesser price, and about a year ago or less than a year ago we made an effort to get the——

[fol. 538] Commissioner Geiger: We understand that. The only question is if you could get it at the Lima gate rate, delivered there, they maintain that transportation line, why you should charge anything additional for that transportation line above that 55 cents.

The Witness: If they furnished the line, they would probably charge us more for the gas, if they had to have in the investment to bring the gas to us.

Commissioner Geiger: Now, your company is in no way connected with the Ohio Fuel Gas Company?

The Witness: In no respect whatsoever.

Commissioner Geiger: You are commonly known as an Insull company?

The Witness: Yes, sir, and the Ohio Fuel Gas is owned by the Columbia Gas & Electric Company.

Commissioner Geiger: No interchange of stock between those two companies?

The Witness: Not to my knowledge, no, sir.

Mr. Marshall: Your Honors please, I think it might be well, so that everybody here will know, I wasn't in the hearings of these cases before, you see originally, in order that Commissioner Geiger will understand, they say it was all explained by Mr. Curtain in the former hearing in the appraisal case and the valuation. You see originally the Medina Gas Company furnished Lima before they contracted with this Columbia bunch and we had their case up and they had to build a line out to meet the Medina Company to somewhere in Wyandot County, if I am correct, 44 miles. Now, when we had the other rate case, they were entitled to amortize because the gas was sent back [fol. 539] and they were holding that as a reserve force, so that they could take care of Kenton the same as Lima, and they found that they were amortizing that line over the life of it and that is why it is being done. I hope you understand it, because they are entitled to that absolutely.

Commissioner Geiger: Well, the gas flows through that line for which you are charging amortization?

The Witness: Yes, sir.

Commissioner Geiger: And you are amortizing it as though its useful life were ten years?

The Witness: Yes, sir.

Mr. Marshall: But they took it under a contract, they were to get—55 cents was the gate rate, and they were to

keep this transportation line in repair. Now, that is the status of it exactly.

Commissioner Geiger: Well, it is only a question of whether the charge is in there. You charged the amortization, we see that.

Mr. Hebel: There is just one correction, I think there is confusion on the fact that the company has not in fact set up amortization on the ten year basis. The order of the Commission in 1922 and 1925 would have provided that if the earnings had been sufficient to have amortized the line off within ten years, but the amount that has been set up on the books, even if you took that into account, wouldn't amortize the line in ten years because there has never been a time when they have set up over half of the amount fixed in the Commission's order which was figured on a ten year basis.

[fol. 540] Q. In other words, Mr. Pringle, in the use of the transmission line, in your operating expenses, there is nothing included in those expenses for the maintenance of the line?

A. The transmission line?

Q. The transmission line.

A. No, sir.

Q. That is paid by the company from whom you buy gas?

A. Yes, sir.

Q. And as a part of the 55 cent rate?

A. Yes, sir.

Q. And there is no pumping expense for the transmission line either?

A. No, sir.

Q. That is paid by the company from whom you purchased the gas?

A. Yes, sir.

Commissioner Geiger: May I interrupt just for what may be a very foolish question, but you get this natural gas under what pressure at your gate?

The Witness: As I remember, it is an eight ounce pressure.

Commissioner Geiger: That is inside the gate?

The Witness: At the city of Lima.

Commissioner Geiger: When it come- to the gate, the valves are connected to the city at a higher pressure than that?

The Witness: Yes, sir.

Commissioner Geiger: Two or three hundred pounds?

The Witness: I don't know what they carry, I suppose around 40 pounds on the line, I am not sure of that.

Commissioner Geiger: But it is admixed there with the artificial gas. Now, is the benefit of that pressure lost so that you have to pump the gas within the limits of Lima? [fol. 541] The Witness: Judge, I will not attempt to explain production methods because I am not versed on that, I am afraid I couldn't help you out.

Mr. Light: May I interrupt? You just stated, Mr. Hebel, that you do not claim credit for the full amount of that. If you refer to Page 1 of Exhibit 104, you are taking full credit.

Mr. Hebel: I said that the company had never set up any amortization on their books on a ten year basis.

Mr. Light: But you, in your Exhibit 104 are presenting to this Commission, using the full 23,000 in your figure.

Mr. Hebel: Showing what the result would be if that is taken into account.

Commissioner Geiger: And that is figured on the former appraisement of the property, not on the present appraisement?

Mr. Hebel: No, Your Honor, that 23,000 dollar amortization item was the total amount fixed by the Commission. If it was set up each year and compounded annually at four per cent. annually, it would write the transmission line off in ten years and that included, of course, any depreciation that came on the line during that ten year period. In other words, it would write the line off in ten years from the value of the line as found at that time, at the time of the order?

Commissioner Geiger: Well, I am going to have considerable difficulty to give you credit for advertising that line in a period of ten years. Let's just not take it up now, but just thinking of it.

Q. Mr. Pringle, what departments, if you know, does the [fol. 542] Midland Company have in which they have a trained personnel on whom your company can call for specialized services if they are in need of such services, what different departments?

A. Engineering, gas engineering, operating engineering, accountants, statisticians, construction.

Q. And they maintain employees in each of those classifications that you have mentioned?

A. They do.

Q. And the operating companies which are under their general direction may call upon those departments for services from time to time?

A. We can.

Q. And when such services are requested and furnished, your company pays the cost of rendering those services?

A. We do.

Commissioner Geiger: How is the cost determined, do they give you a time slip?

The Witness: Well, as I understand it, their office, their employee that is assigned to some specific work, he keeps a time sheet on that and hands it in to the accounting department at the end of the month and the charges are determined and billed to the operating company.

Commissioner Geiger: The operating company pays it?

The Witness: Yes, sir.

Commissioner Geiger: Well, there are in your files, of course, vouchers for that?

The Witness: Yes, sir.

Commissioner Geiger: Showing what those services were?

The Witness: Yes, sir.

Commissioner Geiger: And the city may examine those [fol. 543] if they desire?

The Witness: Yes, sir.

Mr. Light: That is, you are going to furnish them here?

The Witness: Yes, sir.

Mr. Bentley: You asked the one year?

Mr. Light: Yes.

Q. Do you know whether the men employed in those various departments are specialists in that line of work?

A. As far as I know, they are.

Q. Do you know how many days or hours during the year you have used such services, for instance, of the engineering department?

A. No, I do not.

Q. Or of any of the other departments?

A. No.

Q. You could determine that, however?

A. Yes, from our records.

Q. And you are only required to pay for such hours or days as you use that service?

A. Yes.

Q. Do you know who stands the expense of the time when such employees are not engaged for various operating utility companies?

A. The Midland Company itself.

Q. And who carries the expense of vacation periods for those employees?

A. The Midland Company itself.

Q. So that you people are only charged for the actual time?

A. Services rendered.

Q. Of services rendered?

A. Yes, sir.

Commissioner Geiger: Well, now, isn't this a fact, that there isn't a single soul that came from that Midland Company to your company that was any better educated in the [fol. 544] distribution of gas than the men that were right in your Lima Company?

The Witness: I would say they were, because they made that their specialty, probably took a post graduate course.

Commissioner Geiger: That is all right. Just, for instance, give us one great problem you have that you had that you had to call on them to solve for you that you couldn't solve yourself right at home?

The Witness: Recently, we had a case where we were getting a deposit from our gas lines on the orifices. Now, we do not carry any engineers on our payroll, we can't afford it, yet it is necessary from time to time to get the experience of an engineer. We had a man come in here and made an investigation and study and some recommendations as to how we could overcome that.

Commissioner Geiger: Do you know how much he charged you for it?

The Witness: No, I don't know now.

Commissioner Geiger: Nor at what rate per day?

The Witness: No, sir.

Mr. Light: May I ask one or two questions right there?

Mr. Hebel: All right.

[fol. 545] Recross-examination.

By Mr. Light:

Q. Who are the officers of the West Ohio?

A. Mr. E. R. Curtain is President, W. A. Sauer is Vice President.

Q. Who is W. A. Sauer?

A. Located in Chicago.

Q. Does he draw a salary?

A. Not from our company.

Q. Is there anybody in Chicago who draws a salary from your company?

A. No, sir.

Q. Nobody?

A. None whatsoever.

Q. What other officers are there?

A. Mr. G. F. Mintal is treasurer.

Q. Is he in Chicago?

A. Yes, sir.

Q. He draws no compensation?

A. None at all. D. P. Sharon is Secretary. He does not draw any salary.

Q. Who pays them for their services to the West Ohio Gas Company?

A. Midland.

Q. Midland pays their salary?

A. Midland pays their salary. We don't have anything to do with their salary.

Q. You in turn pay Midland?

A. Midland does not bill us for any executive salaries whatsoever.

Redirect examination.

By Mr. Hebel:

And thereupon a paper writing was marked for the purpose of identification as Company's Exhibit Number 105.

Q. Mr. Pringle, have you prepared an analysis of the [fol. 546] use of gas in Lima by your consumers, dividing the customers up into those that use a thousand cubic feet or less and then various blocks over a thousand cubic feet

in order to determine the quantity of gas that would be sold in each step of the rate proposed by the city?

A. Yes, sir.

Q. Will you state the method by which those quantities were determined?

A. Each and every bill rendered to customers during the year ending March 31, 1928, was analyzed and reclassified into the various steps as shown by the ordinance passed by the City of Lima and the price per thousand for each of those blocks or each of those steps was applied to the results obtained from the analysis.

Q. That was for the year ending March 31, 1928?

A. Yes, sir.

Q. Was that analysis made at the request of the city?

A. Made at the request of the City of Lima, yes.

Q. And involved an examination of each and every bill rendered during that year's period?

A. Yes, sir.

Q. I hand you a document marked Company's exhibit Number 105 and ask you to examine that and state whether that was prepared by you or under your direction and supervision?

A. It was.

Q. Turning to the first page of the document marked Company's Exhibit 105, will you explain what that shows and the method by which the figures shown as gross revenue under ordinance rates was determined?

A. The first sheet of this exhibit is a statement of revenue and expenses for the year ending March 31, 1928, giving effect to revenue from sales under rates fixed by ordinance passed by the City of Lima, versus revenue derived from [fol. 547] the present rates. In the first column of figures is the operating expenses of the company for the year ending March 31, 1928, which total $407,884.93. The figures immediately under that, or gross revenue under the rates, were arrived at in this manner: The total of cubic feet of gas sold for the year ending March 31, 1928, was 382,341,-700, and from an analysis of each bill rendered during the year, it was determined that 28.91 per cent. of the total cubic feet sold would come within the first step of the ordinance passed by the city, 43.11 in the second step, 12.21 per cent. in the third and 15.77 per cent. in the last step of the ordinance rate. In other words, the total sale of 382,341,-

700, 28.91 per cent. would come in the first step of 90 cents, and 43.11 per cent. would come within the second step at 80 cents, and 12.21 per cent. of the total cubic feet of gas sold would come within the third step of the rate, and 15.77 per cent. in the last step of the rate. Applying the ordinance rate to those various amounts of cubic feet sold would give a total gross revenue of $299,517.91.

Q. That would be the revenue then which the company would have derived if the ordinance rate passed by the City of Lima in March, 1928, had been in effect during the year immediately preceding it?

A. Yes, sir.

Q. Based on this analysis of all the actual bills rendered?

A. Yes, sir.

Q. And would that have been sufficient to have paid the operating expenses for that year?

A. It would have lacked $108,367.00 from paying the total cost of operation.

Q. That is exclusive of any allowance for return?

[fol. 548] A. Yes, sir.

Q. And what does the righthand column show?

A. Right-hand column is the amount of 407,884, is the total amount of the expenses as shown in the lefthand column, and we didn't repeat each account as shown there, but used it in total only, and against that expense, the company had a revenue of $494,283.40 under the present rate.

Q. That was the revenue in fact derived during that twelve months' period?

A. Yes, sir.

Q. And was a return of what per cent. on the valuation recently fixed by the Commission?

A. The net applicable to valuation was 4.54 per cent.

Q. Turning to Page 2 of this Exhibit, will you explain what is shown on that schedule and the method by which the data was determined?

A. Page 2 is a similar statement to cover the years 1928, '29, '30 and '31.

Q. Is that calendar years?

A. Yes, sir. And the expenses as shown on this schedule under the years '28, '29, '30 and '31, are the same operating expenses that appear on Page 1 or Schedule 1 of the exhibit 104. The cubic feet of gas sold in each of those years, as

are shown in the various schedules of Exhibit 104, using that quantity of cubic feet of gas, we used the same percentages as we found from making the analysis of the customers' accounts for the year ending March 31, 1928, less the quantity of gas that was sold to Cridersville; in other words, for the calendar year, 1928, 404,189,900 cubic feet of gas was sold, from that amount we deduct 2,268,500 as the quantity sold to Cridersville, less a net total sale of 401,921,400. We used that quantity of gas and divided it [fol. 549] up into each ordinance step as mentioned in the note on this Page Number 2 of the schedule, using the same percentages for the various steps as appear on Page 1. Using that method we find we have a picture of $314,-857.19, which appears up under the year 1928, under total cost of operation. And the revenue that would have been derived that year had the ordinance rate been charged, deducted from the total cost of operation, gives a net deficit of $76,151.23. The same method was used for each of the years 1929, '30 and '31 and the results obtained are shown on Sheet 2 of this exhibit. The net deficit for the year 1929 is $93,242.00; for the year 1930, $80,874.69; for the year 1931, $74,759.41.

Q. And all of those are deficits before any allowance for return on investment?

A. They lack that much money of paying the actual operating expenses, let alone providing any return for the valuation.

Q. And the breakdown of gas furnished in each step under the ordinance rate for each of these four years was determined on the basis of the analysis of the customers' bills for the year ending March 31, 1928?

A. Yes, sir.

Mr. Hebel: I would like to offer in evidence Company's Exhibit 105.

Commissioner Bricker: It may be admitted.

And thereupon the paper writing last above offered was introduced and admitted in evidence on behalf of the West Ohio Gas Company and is herewith submitted, marked Company's Exhibit Number 105.

[fol. 550] Recross-examination.

By Mr. Light:

Q. You are now spending, Mr. Pringle, approximately ten thousand dollars a year trying to secure new business?

A. Yes, sir.

Q. And the hardest job that department has is to sell and convince people that they can afford to pay that price?

A. I assume so.

Q. And your new business department could do a great deal more business if your gas were cheaper, couldn't it, by any rule of business economics that you know anything about?

A. I assume so.

Q. You do not take anything like that into consideration in your figures?

A. No, sir.

Mr. Light: That is all.

Redirect examination.

By Mr. Hebel:

And thereupon a paper writing was marked for the purposes of identification as Company's Exhibit Number 106.

Q. Mr. Pringle, have you prepared a written statement showing the cost of money to West Ohio Gas Company for money procured through the sale of its bonds and preferred stocks?

A. Yes, sir.

Q. I hand you a document marked Company's Exhibit 106 and ask you to examine that and state whether that is [fol. 551] such statement?

A. It is.

Q. Will you explain what is set out in this statement, and the method by which the percentages reached were derived?

A. On Page 1 of the exhibit is a statement showing the cost of money secured through the sale of securities, bonds, first and refunding mortgage, 6 per cent. gold bonds, consisting of the original issue dated September 1st, 1924, and the supplemental issue dated June 1st, 1931, maturing December the 1st, 1954.

Q. Now, are those the only two instances in which the West Ohio Gas Company has issued any bonds?

A. They are.

Q. The original issue which you mentioned is December 1, 1924, is that the issue that was put out at the time the West Ohio Gas Company was organized?

A. It was.

Q. And was that authorized by this Commission?

A. It was.

Q. And consisted of an issue of one million dollars?

A. It did.

Q. Then there were no further bonds put out by the company until June of last year?

A. Yes, sir.

Q. And at that time, an issue in what amount was put out?

A. 300,000.

Q. All right, you may proceed.

A. Total amount of bonds issued and outstanding is $1,300,000.00. From that amount of bonds issued, the company realized on the original issue, $890,000.00, and the supplemental issue 288,000, or a total of $1,178,000.00. On the total amount of bonds issued, a discount of $122,000.00 was allowed.

Q. Now, was the net price at which those bonds might be [fol. 552] issued in each case fixed and determined by this Commission?

A. They were.

Q. That is the minimum realization?

A. Yes, sir. Expenses in connection with the sale of the bonds in the original issue amounted to $6,552.02, the supplemental issue $1,692.19, or a total of $8,244.21. The annual cost to the company for the money thus realized is in the form of interest charges of $78,000.00 per year, discounts and expense to be amortized annually, $4,467.60, and federal tax based on our average experience $650.04; state tax $172.38; making a total annual cost of $83,290.02, which gives a cost, annual cost, a per cent. of 7.07 plus.

Q. That is the annual cost on each dollar realized for gas purposes from the sale of bonds, is that correct?

A. Yes.

Q. What does your next line show?

A. The next amount is 6.97 per cent. plus, which will be the yield to the purchaser.

Q. That is the yield to the purchaser from you?

A. Yes, sir.

Q. Who purchased these bonds from you?

A. Halsey Stuart Company.

Q. That is a security house, is it?

A. It is.

Q. Specializing in the sale of public utility bonds?

A. Yes, sir.

Q. Do you know whether that house handles stock issues?

A. I am not certain.

Q. Where is the principal office of that?

A. Chicago.

Q. Do you know what other places they have offices?

A. They have offices located in all the other principal cities of the country.

[fol. 553] Q. In other words, they market these bonds nation-wide?

A. They do.

Q. Do you know in how many states at the present time, holders of these bonds are located?

A. The bond holders are located in 28 states.

Q. Do you know whether bonds are held by any holders outside the United States?

Commissioner Bricker: What is the purpose of this?

Mr. Hebel: Show the distribution of these bonds.

Commissioner Bricker: What has that got to do with the rates?

Mr. Hebel: The sale of these bonds is nation-wide and not merely local.

Commissioner Bricker: What if they are?

Mr. Hebel: I think it affects the question of the rate of return to which this company is entitled.

Commissioner Bricker: In what way?

Mr. Hebel: The fact is that the sale of utilities securities is generally nation-wide and consequently the results of the holdings of the courts as to what money cost in various sections of the country to utilities doesn't become of direct——

Commissioner Bricker: You are showing the actual cost here. I don't think it is necessary to go into this.

Mr. Hebel: Well, but the question of the rate of return is dependent on the general cost of money for utility companies throughout the country.

Commissioner Bricker: You can't show that by showing how diversified the sale of your bonds is, whether they are [fol. 554] held in foreign countries or not. Go ahead. It is immaterial so far as I can see, but you may proceed in your own way.

Q. What is the average price or amount realized by your company from the sale of bonds?

A. The average price per hundred dollars is $90.61.

Commissioner Geiger: What I can't quite follow, is this money that you borrowed to operate your company, or are you still upon the proof of the replacement value of your property?

Mr. Hebel: This is the money, Your Honor, that is actually realized from the sale of securities by this company for capital purposes, securities sold with the permit of this Commission.

Commissioner Geiger: Haven't we found the value of the property?

Mr. Hebel: Yes.

Commissioner Geiger: Then what has this got to do with it?

Mr. Hebel: This is evidence to establish the cost of money to the company, which is certainly directly important in determining the rate of return which the company should be allowed.

Commissioner Geiger: Well, never mind. It would be all right to put in, or at least, many have thought it all right, some have doubted whether it is all right, cost of money acquired to build the plant or to replace the plant, theoretically to replace it; but what your bonds paid or anything else hasn't anything to do with it. The cost of your money may be shown to go to fixing the value of your [fol. 555] property used and useful.

Mr. Hebel: No, Your Honor, I am simply trying to show by what evidence is available, the rate of return to which this company is entitled. Now, certainly the evidence as to what money actually cost this company is as good evidence as possibly could be produced.

Commissioner Bricker: The evidence that we really desire at this time is how much return you have to have to

keep capital flowing into the industry. You might have made an uneconomic distribution of these bonds, you might have made too much discount, you might have given too much to the bankers. In other words, you have to go into all these questions if you expect to bind us by your experience.

Commissioner Geiger: How about just putting it in for what it is worth, tell what it is and put it in the record without reading it all over?

Q. The second page covers the cost of stock?
A. Yes, sir.
Q. Preferred stock sold by the company?
A. Yes, sir.

Mr. Hebel: Well, then, I would like to offer in evidence Company's Exhibit Number 106.

Mr. Light: I want to note an objection to save the question, as being immaterial and irrelevant.

Commissioner Bricker: It may be admitted. Objected noted and exceptions saved.

And thereupon the paper writing last above offered was introduced and admitted in evidence on behalf of the West Ohio Gas Company, subject to the above objection and [fol. 556] exception of the City of Lima, and is herewith submitted, marked Company's Exhibit Number 106.

Recross-examination.

By Mr. Light:

Q. Mr. Pringle, I don't recall, but I believe you have been offering preferred stock to your customers and people generally in Lima for sale?
A. There are two campaigns on yet.
Q. And what price have you been charging them for your preferred stock?
A. 98.
Q. 98?
A. Last sold at 98.
Q. But your schedule on Page 2 of Exhibit 106, you show a sale at 12½ points off?
A. That is the original issue.
Q. What is it?
A. That was an original issue.

Q. Who gets the difference between 87½ and 98?

A. We sold all of our stock in the beginning to Utilities Securities Company, who took the stock over and sold it, at 87½.

Q. Is this the stock you have been offering to your customers at 98?

A. The stuff we sold last year was a block, wasn't any additional stock issue by the company, but was a part of the original issue that was taken over by the parent company.

Q. I understand then that you have on two campaigns offer*ing* your own stock, this stock referred to on the second page, to your Lima customers at 98, which you say is only worth 87½, is that it?

A. I don't say what it is worth. I am just telling you [fol. 557] that our employees sold stock for the Utilities Securities Company at 98.

Q. Who did you give the 12½ per cent. to?

A. The stock was originally sold to the Utilities Securities Company back in 1924.

Q. Is that an Insull subsidiary?

A. I don't know. It is a company located in Chicago that deals in stocks.

Q. Do you know whether any of the Insull boards are officers of that company?

A. I have no personal knowledge of its officers.

Q. When was that sale?

A. Back in 1924.

Q. That was after Mr. Insull was interested in the West Ohio Gas Company at Lima?

A. Yes.

Q. And you sold your seven per cent. preferred stock at 87½?

A. I think that is what it sold for, yes.

Q. And you are now offering it to your Lima customers at 98?

A. Not now.

Q. You have been recently?

A. This is an individual matter. Utilities Securities Company was offering for sale in Lima and elsewhere where we operate, preferred stock at 98, which our company had no interest in whatsoever, because our company had sold it in the beginning.

Q. Your employees, including yourself, have assisted in those sales, haven't you?

A. Yes, sir, for which you received a commission.

Q. Each one personally received a commission?

A. Yes, sir.

Q. In addition to the compensation the gas company paid you?

A. We sold this after hours.

[fol. 558] Q. After hours?

A. Yes, sir.

Q. How much did you get out of the sale of that stock?

A. We got $1.50 commission per share.

Q. That would be a point and a half?

A. But our company had nothing to do, understand, with the sale.

Commissioner Bricker: Whose stock was this that was being sold?

Mr. Hebel: The stock referred to on Page 2 of Exhibit 106.

The Witness: All of the stock was issued in the beginning and sold.

Commissioner Bricker: To whom?

The Witness: To Utilities Securities Company.

Commissioner Bricker: What relation has that to the Midland Company?

The Witness: I don't know whether it has any relation to it.

Commissioner Bricker: Will you find out?

The Witness: Yes, I can. I don't know whether Mr. Hebel can answer that, he lives in Chicago, perhaps he can.

Mr. Hebel: I can't answer the question.

Commissioner Bricker: Can you know by tomorrow morning?

Mr. Hebel: I don't know whether I can find out or not.

Commissioner Bricker: Let us know tomorrow if you can.

Mr. Light: Will you also ascertain what, if any, interest [fol. 559] the owners of the Mildand Company have in the Halsey Stuart Company?

Mr. Marshall: I will bet they don't have any.

Mr. Hebel: I am certain they don't.

Mr. Light: The Halsey Stuart Company has sold a great many stocks.

Mr. Hebel: They underwrite public utilities securities all over the country.

And thereupon an adjournment was taken until 10:00 o'clock A. M. of the following day, Wednesday, June 8, 1932.

[fol. 560] Wednesday Morning Session

June 8, 1932.

And also—

FRANK L. PRINGLE, resuming the stand, continued his testimony as follows:

Examined by Mr. Hebel:

And thereupon a paper writing was marked for the purpose of identification as Company's exhibit Number 107.

Q. Mr. Pringle, the West Ohio Gas Company was organized about December, 1924?

A. It was.

Q. And it acquired the properties of two companies that were operating in Lima at that time?

A. It did.

Q. And also the properties of some independent companies that were serving some other towns?

A. Yes, sir.

Q. The Lima Company whose property was acquired also owned the transmission line involved in this case?

A. It did.

Q. And that transmission line was then being used and is now being used not only for the purpose of conveying gas to Lima, but also gas to these other towns? A. Yes, sir.

Q. There were certain securities issued with the permission of the Commission at that time?

A. There were.

Q. Do you recall the amount of those securities?

A. There was an issue of $1,000,000.00 in bonds, and $750,000.00 preferred stock, and the common stock of slightly over a million dollars, I don't remember the exact figure.

Q. That was issued against all the property that was [fol. 561] acquired at that time?

A. Yes, sir.

Q. Now, are those securities outstanding at the present time?

A. They are.

Q. Have there been capital additions made to the Lima property since that time?

A. Yes, sir.

Q. And such additions are in excess of any retirements that have been made during the time the West Ohio Gas Company has existed?

A. Yes, sir.

Q. Have you made an investigation in order to determine the proportion of those securities outstanding that are properly allocable to the Lima property of the West Ohio Gas Company?

A. I have.

Q. I hand you document marked Company's Exhibit Number 107 and ask you to examine that and state whether that summarizes the result of your study?

A. It does.

Q. Will you take the document marked Company's Exhibit 107 and explain from that the method by which you arrived at a determination of the proportion of the securities issued in 1924, that are allocable to the Lima property of the West Ohio Gas Company?

A. The first column of figures on this exhibit are the values of the companies purchased by the West Ohio Gas Company, the values of those that were fixed by the Public Utilities Commission in its order Number 3330, issued over date of November 26th, 1924. The value of the Lima natural gas property shown includes the value of the transmission line from a point east of Kenton to Celina, Ohio. The transmission line was owned by the Lima Natural Gas Company and was issued for the purpose of supplying Lima, Wapakoneta, St. Marys and Celina, and in order to allocate the value of the transmission line as contained in the value [fol. 562] of the Lima Natural Gas Company property, we found the quantity of gas used by each of the four districts at that time; in other words, we found that 52 per cent. of all of the natural gas transported by the line went to the Lima district. On that basis, we took 52 per cent. of the total value of the transmission line and allocated it to Lima, and the fourth column shows the value of $736,119.00 as Lima's

proportion of the line. Then 13 per cent. of the value of the line was allocated to Wapakoneta, 16 per cent. to St. Marys and 19 per cent. to Celina.

The last column on the exhibit shows the total value of the property, including the transmission line allocation.

Table 2 of the exhibit shows the value of the property allocated to each district on the basis of each district's value as related to the total. In other words, 68.44 per cent. of the total value of the property as found by the Commission is allocated to the Lima District, and, as shown by the exhibit, the remaining percentages to the other three districts.

Commissioner Bricker: And 52 per cent. of the 68.44 is allocated to the transmission line?

The Witness: 52 per cent.—I don't just get your question, Mr. Bricker.

Commissioner Bricker: 52 per cent. of the 68.44 per cent. being the portion of the Lima district, is allocated to the transmission line?

The Witness: No. 52 per cent. of the transmission line went to Lima.

Commissioner Bricker: All right.

[fol. 563] The Witness: And the value shown here of 68.44 is Lima's percentage of the total value of the property. The original issue of securities——

Q. At that point, Mr. Pringle, and in the total value of the Lima property is 52 per cent of the transmission line?

A. Yes, sir, that is true.

Q. Do you know what the fact is as to whether the proportion of the transmission line now being used for Lima service is greater or less than 52 per cent?

A. It is greater.

Q. As shown by prior testimony in this case?

A. Yes, sir. The original issue of securities was a million dollars in bonds, 750,000 in preferred stock, 1,626,381 in common. The annual interest charges on the securities, bonds $60,000.00, and preferred stock $52,500.00, or a total security interest charge of $112,500.00 annually.

In Table 3, we allocate the $112,500.00 interest charges to each of the four districts on the same basis as each district's property value is related to the total value of the property. In other words, 68.44 per cent. of the interest charges on bonds is allocated to the Lima district, or $41,064.00. Of the

interest charges on preferred stock, 68.44 per cent is also allocated to the Lima District, or $35,931.00.

The last column shows that the Lima District should stand $76,995.00 of the annual charge on securities.

The same principle is followed in allocating the amount to each of the other three districts as shown in Schedule 3. [fol. 564] The last total on this page, common stock dividends paid during the years 1928, '29, '30 and '31, is allocated on the same percentage basis as was the allocation of interest charges on bonds and preferred stock. In other words, in the year 1928, the company paid 70 cents a share on its common stock and the Lima district is allocated $35,931.00 of that amount, and in the year 1929, the amount is shown and the same for '30 and '31.

Q. What, approximately, is the surplus of the company at the present time, do you know?

A. I don't recall right offhand.

Q. Do you remember whether it is around $65,000.00?

A. Between sixty and seventy thousand dollars. I don't remember the exact amount.

Q. The company has issued some securities since this time?

A. They have.

Q. $300,000.00 in bonds?

A. Yes, sir.

Q. And was part of that security issued for additions to property used and useful in Lima?

A. Yes, sir.

Q. But that is not included in this schedule?

A. It is not.

Commissioner Bricker: What has been done with the monies that have been set aside for purposes of amortization of this transmission line?

The witness: We didn't actually set aside any cash.

Commissioner Bricker: You haven't kept any fund at all.

The Witness: No, sir.

Commissioner Bricker: Was it the purpose of that order [fol. 565] that that fund be set aside as a sinking fund to retire the securities that might be outstanding against the transmission line?

The Witness: As I recall it, the order made no mention of retirement of securities.

Commissioner Bricker: What did you think the purpose of it was?

The Witness: Sir?

Commissioner Bricker: What did you in your accounting think the purpose of it was?

The Witness: Are you referring to Order 179 now, the amortization?

Commissioner Bricker: That is right.

The Witness: Or 3330?

Commissioner Bricker: 179.

The Witness: Well, Order 179 was issued on the amortization feature to retire that line over a ten year period, and that order was——

Commissioner Bricker: By retiring that line, what do you mean?

The Witness: And that order was issued prior or the case, rather, was started prior to the time the Commission authorized the consolidation of these companies, as I recall it.

Commissioner Bricker: This authorization was made in 1924, I believe, wasn't it?

The Witness: Yes, sir.

Commissioner Bricker: And the amortization order was made in 1925, was I remember the date. I may be wrong on that.

[fol. 566] The Witness: The final order was issued in 179 in 1925, that is true.

Commissioner Bricker: What I am trying to get is what your idea was of the purpose of this amortization order, what were you going to do with these monies that were allowed to you, a part of which were set aside on your books, as the result of that amortization order, were you just going to leave the securities outstanding against the property even though you amortized it on your books?

The Witness: I can't answer that question, Mr. Bricker.

Commissioner Bricker: That is evidently what you did, isn't it?

The Witness: We set up the amount on our books, that is true.

Commissioner Bricker: And spent the funds?

The Witness: Yes, sir.

Commissioner Bricker: Retired none of the bonds?

The Witness: No, sir.

Commissioner Bricker: Proceed.

Mr. Hebel: I would like to offer in evidence at this time, Company's Exhibit No. 107.

Mr. Light: Note an objection as immaterial.

Commissioner Bricker: Objection noted and exceptions also. It may be admitted.

And thereupon the paper writing last above offered was introduced and admitted in evidence on behalf of the West Ohio Gas Company, subject to the above objection and ex-
[fol. 567] ception of the City of Lima, and is herewith submitted, marked Company's Exhibit Number 107.

Q. Mr. Pringle, you made a study to determine the portion of the gas sendout from the Lima plant that is used in serving Lima and that used in serving the towns north and that used in serving Delphos?

A. I think I have the figures here, yes.

Q. Have you made such a study?

A. I have.

Q. And on what period is that study based?

A. The period from October 1st, 1930, to October 1st, 1931.

Q. One year?

A. Yes, sir.

Q. And what per cent of the gas sendout is used in Lima district and what per cent. from the other two places?

A. For the year mentioned, 91.69 per cent. of the gas sendout went to the Lima district and 1.78 per cent. to the towns north of Lima, and 6.53 per cent. to Delphos.

Q. Do you know whether that ratio is continuing at approximately the same rate since that time?

A. About the same percentage, yes.

Mr. Hebel: That is all. You may cross-examine.

Re-cross-examination.

By Mr. Light:

Q. As I understand Exhibit 107, on the basis of the finding of this Commission as to the value of 3,126,000.00 and so forth, your company issued securities in the face value of $3,376,000.00 on December 1st, '24?

A. Yes, sir.

[fol. 568] Q. The million dollars refunding what?

A. Sir?

Q. The million dollar first mortgage bond issue refunded what? Was there a prior bond issue that that refunded?

A. Those are the six per cent bonds issued by the company on December 1st, 1924, thirty year bonds.

Q. What did you refund?

A. Nothing.

Q. What expenditures did you make about December 1st, '24?

A. We purchased the properties of the Lima Natural Gas Company, The Lima Gas Light Company, Wapakoneta Natural Gas Company, the St. Marys Gas Company and the Celina Gas Company.

Q. Then I understand this money was used to purchase the property?

A. Yes, sir.

Q. That is right?

A. That is right, yes, sir.

Q. And there was no outstanding bond issue refunded at that time?

A. As far as the West Ohio Gas Company was concerned, no, it started its operations on December the 1st, 1924.

Q. What was refunded?

A. As far as the West Ohio Gas Company——

Q. I didn't ask you that.

A. I don't know of anything that was refunded.

Q. Will you look at the first page of your exhibit, original issue of securities, do I find the word "refunding" in there?

A. That is the way our bonds are stated. Now, I can't discuss finances and tell you the significance of the wording because I am not versed and have no information on that subject.

Q. You don't know?

A. No, sir.

[fol. 569] Mr. Marshall: Mr. Commissioner, what Mr. Light wants to know about, that is all of record here, I was on the Commission at that time, West Ohio was a new organization and it took all the bonds of all these underlying companies, that is what we authorized them to do, and I suppose when they talk of refunding——

Commissioner Bricker: This was in the nature of an original issue, though?

Mr. Marshall: I assume they took up all the underlying bonds of these companies.

Commissioner Bricker: From the cash that they got from the sale of these securities?

Mr. Marshall: I remember the case very well and I was in it. That is of record, Mr. Light. I am not trying to tell the witness what to say, but if you want it, we can get that record. It all shows what it was, the valuation made at that time for purchase and sale purposes.

Mr. Light: Do I understand, Mr. Marshall, that the billion dollars refunded outstanding obligation of these companies?

Mr. Marshall: That is my understanding.

Mr. Light: To the full extent of the million dollars?

Mr. Marshall: I don't know whether it was all of it, but, as I remember the case, it cleaned up all the outstanding, underlying bonds. We can find it for you here and get it if you want it.

Q. Is December the 1st, 1-24, the date of the purchase of these properties by the Insull interests?

A. What is it?

Q. What is the date of the acquisition of these proper-
[fol. 570] ties by the Insull interests?

A. No, the Insull interests controlled the several separate and distinct corporations prior to December 1st, '24, but December the 1st, '24——

Q. So that the West Ohio Gas Company was a reorganization of properties already held by the Insulls?

A. Yes, sir.

Mr. Marshall: That isn't correct.

Mr. Light: He just said so.

The Witness: Well, I will correct it to this extent, a new corporation was formed known as the West Ohio Gas Company and started operations on December the 1st, 1924, and it had acquired the properties of the companies I have just mentioned, started off afresh.

Q. I will ask you again, Mr. Pringle, whether or not the West Ohio Gas Company was an assimilation of several of these companies into one corporation?

A. Yes.

Mr. Marshall: We bought it of the U. G. I., they owned all of these companies, it was a purchase and sale by authority of this Commission and the bonds I think, were all cancelled, I think the order was to cancel all the underlying

bonds. I don't want to state that to be positive, I would have to refresh my recollection.

Q. These bonds were sold at 11 points off par or at 89?

A. As I recall, yes.

Q. What was the occasion of the issuance of the preferred stock, Mr. Pringle?

A. Mr. Light, I had nothing whatsoever to do with the security issues or the purchase of the company.

Q. Who did?

A. It was entirely out of my line.

Q. Do you know who did?

[fol. 571] A. I assume Mr. Curtain, Senior, acting for our company.

Q. Those securities, those issues were all accomplished in Chicago, dictated from Chicago?

A. I don't know. I had nothing to do with it.

Q. You worked for the company?

A. I worked for the company, but there are a lot of things happened in the company that I didn't know anything about.

Q. Did you have any $750,000.00 cash assets come into your company about that time?

A. No, we took over the physical property.

Q. This $750,000.00 was still a part of the purchase price?

A. Sir?

Q. This was still a part of the purchase of these properties?

A. I assume so.

Q. In addition to the bond issue?

A. I assume so.

Q. And that was disposed of at 12½ points off par?

A. Yes, sir.

Q. Does the common stock have a par value?

A. No, sir.

Q. How did you arrive at that value of $21.00?

A. I didn't arrive at it. It was done by the Public Utilities Commission.

Q. Well, you recognize, maybe I am wrong, as I understand, in this exhibit, your valuation was less than your securities you issued, you used a different set-up on your books from that fixed by the Commission?

A. No, sir, the figures——

Q. That is, you issued securities of 3,376,000 and the Public Utilities' finding of value was 3,126,000?

A. Yes.

[fol. 572] Q. Or $250,000.00 difference?

A. Yes, sir.

Q. Which you added as an asset on your books?

A. The amount of 3,376,381 is the amount that appears on our books.

Mr. Marshall: That was the discount on their securities.

Commissioner Bricker: 11 and 12½ points.

Mr. Light: Well, the obligation, of course, the 3,376,000 is the face of the obligation.

Mr. Marshall: Well, but you had to allow them in the first case, the way the Commission does, if they find a value, you have to issue securities sufficient to meet that consideration price. If they can't sell them for more than 80, 90, 92 or 93, they issue enough additional to meet that.

Mr. Light: The Commission didn't require anybody to issue these securities.

Mr. Marshall: They don't require it, they authorize it.

Mr. Light: That is all.

Commissioner Bricker: Just a minute. The Commission's order, of course, in 1925, required that the bond discount be amortized?

The Witness: Over the life of the bonds.

Commissioner Bricker: What has been done on that?

The Witness: We are amortizing it out annually, now.

Commissioner Bricker: Have you retired any of the bonds?

The Witness: No, sir.

Commissioner Bricker: Have you got the fund?

The Witness: No, sir.

[fol. 573] Commissioner Bricker: What do you mean then that you are amortizing them?

The Witness: We are writing off on our books, as authorized by the Commission.

Commissioner Bricker: Just simply a book account entry then?

The Witness: As far as I know it is, yes.

Commissioner Bricker: What is the purpose of this exhibit.

Mr. Hebel: It goes to the question of the rate of return that should be allowed and is offered under our interpreta-

tion of the Baltimore Railway Decision as to what matters are of importance for consideration in that connection. That is the relevancy it would have if the question were merely one of confiscation. The question, of course, before this Commission is a somewhat broader issue and it is important on consideration of what rate of return, which might be something above the confiscation line, should be allowed by this Commission.

Commissioner Bricker: If you over capitalize your property do you think this Commission ought to take it into consideration in the amount of the rate, would that be a loss to the rate payer?

Mr. Hebel: The capitalization of this company was passed upon by this Commission——

Commissioner Bricker: Upon application of the company.

Mr. Hebel: Yes.

Commissioner Bricker: And upon its own appraisal.

Mr. Hebel: On whatever evidence was submitted. I don't [fol. 574] know what evidence was before the Commission. My understanding was that the Commission had its engineers make an appraisal of the property at that time.

Commissioner Bricker: Do you know what was done, Mr. Marshall? Was there an independent appraisal made by the Commission.

Mr. Marshall: There was, yes. I remember they worked on it for weeks.

Commissioner Bricker: On the securities issue?

Mr. Marshall: On the purchase and sale. I would be glad, I have got the whole history of that thing in my own files, I would be glad to furnish Mr. Light, I know the history of the whole thing, I just have to refresh my recollection because I remember Mr. Poor and I worked on that case and had the engineers there.

Commissioner Bricker: If they didn't get any closer than they did on the return when the new rates were fixed, this isn't of much value. They missed that $200,000.00 out of $700,000.00.

Mr. Marshall: Well, I am not reflecting on the credit of the engineers.

Commisioner Bricker: I am not either, but I am just saying that that is the history of this case.

Mr. Marshall: You are talking now about the $700,000.00 estimate——

Commissioner Bricker: That the new rates would bring, and they actually brought $200,000.00 less.

Mr. Marshall: Well, I am not going to make any bones about it, I always stated to them in all this litigation I [fol. 575] thought their rate was going to be prohibitive, I think it is proved now that it was, that was the history of it. They had the gas business and we couldn't do anything else.

Mr. Hebel: I don't know, of course, what the record showed in that case——

Mr. Marshall: It showed we had to give then that rate to give them a rate of return. The Supreme Court of Ohio affirmed it.

Mr. Hebel: I do remember in this case that Mr. Curtain, Sr., testified in reference to the fact that about that time they thought they were going to get a very large additional volume of business from the Lima Locomotive Works which they didn't get.

Commissioner Bricker: That might have made up a great part of the difference, I don't know.

Mr. Hebel: The fact is that the operating expense estimate was fairly close to what actually worked out.

Commissioner Bricker: You appreciate that it has always been a rule here, I know Mr. Marshall does, that your securities issuance, charges necessary to sustain your capital structure, are not properly a part of a rate case and it is so written in every securities issue that goes out from this Commission.

Mr. Hebel: I appreciate the fact that that has been the viewpoint taken by many of the state commissions and by many of the lower courts, but there have been a good many things about rate cases and rate litigations that from time to time the Supreme Courts clarified and we have had to proceed and been entitled to introduce evidence that possi- [fol. 576] bly wasn't accepted and received before that. I don't think we can escape the fact that since the Baltimore Railway Company decision, that this kind of evidence is proper. Now, it may well be that if your company's history takes back your issuance of securities to a time prior to commission regulation or there is anything in the fact that shows that there was an over-capitalization

of unregulated securities, that that would affect the outcome of your case. But here we are dealing with a situation where approximately three years before this ordinance was passed, that is involved in this case, a new company started under way with a capitalization that was submitted to and passed upon by this Commission, and I don't believe it is escapable that under that situation, the principles enunciated by the majority opinion in the Baltimore Railway case must be given weight. And in this case, it is necessary, of course, to determine an allocation of the securities because of the fact that we have got a property which involves several communities and only one community involved in this rate litigation. That is the reason we can't just come in and show the total amount of securities outstanding and we have tried to submit here what we believe is a fair allocation of those securities to the Lima district.

Commissioner Bricker: Have you made a study of that allocation order of the Commission in 1925?

Mr. Hebel: There were no allocations made in the order as far as the securities were concerned, they fixed certain values for the property of these different companies.

Commissioner Bricker: Pardon me, I didn't mean allocation, I meant amortization of the transmission line.

[fol. 577] Mr. Hebel: I am familiar with that provision.

Commissioner Bricker: In your opinion, it has been properly handled by the Company as far as amortization is concerned?

Mr. Hebel: Our position on that, Mr. Commissioner, is this, that the company is not required to take out amortization until it has first earned its reasonable rate of return, and until the company has earned at least its 7.8 per cent of return, it wouldn't be required to set up any amortization and if it did set up any, it couldn't be penalized for that fact in a rate case because the rate payers wouldn't begin to pay for the amortization of that property until the company had first received its fair return. Consequently, as I stated in one of the earlier hearings, it is our position here that no deduction because of amortization is proper in this case and can fairly be made against the company unless it is first shown that the company, before you take amortization into account, earned at least 7.8 per cent annually on its property. Now, that was the purpose

I explained when I introduced Exhibit 103, for the introduction of that exhibit.

Commissioner Bricker: Also in regard to the handling of the amortization of bond discount?

Mr. Hebel: I have never gone into that phase in this case as to how it is handled or what is required, so I couldn't answer that at this time.

By Mr. Light:

Q. Mr. Pringle, in your Exhibit 104, do you show the amortization of that bond discount?

A. No, it is not shown.

Q. It isn't on your books?

[fol. 578] A. It is on the books, yes, but doesn't appear in this exhibit.

Q. Yesterday you said something about some letters having been written concerning the purchase wholesale of gas. When were those letters written that you talked about?

A. I didn't write the letters personally, but I know that letters were written by Mr. Curtain, Sr.

Q. Please answer the question, when were they written?

A. I think some time in 1928, to the best of my recollection.

Q. Do I understand you now to want to indicate to the Commission that there is not an abundant supply of natural gas?

A. I am not making any indication at all.

Q. There is an abundant supply of natural gas at this time?

A. I have no knowledge of actual——

Q. You said yesterday?

A. So far as I know, there is, but I don't know anything definite about it.

Q. You are having no trouble getting all the natural gas you want?

A. We are getting along splendidly now.

Q. These letters you were talking about were letters you had written to whom?

A. The letter was written to each council in the towns in which we operate and a letter to the gas company, Midwestern Gas Company in Toledo.

Q. That is a distributing company in Toledo?

A. Yes, sir.

Q. Owned by the Ohio Fuel?

A. I think they are. The East Ohio Gas Company and the Logan Gas Company.

Q. What was the subject matter of the letters you wrote to the councils of the towns?

A. We advised them that we were on the market for a certain quantity of gas annually.

Q. These council men, you told them that you wanted to [fol. 579] find gas?

A. Sir?

Q. And then you wrote to the distributing company in Toledo and told them you wanted to buy gas?

A. Asked them if they had an available supply of gas that they could sell us, because an inference had been made at one time that we didn't make our best endeavor to secure a supply of gas. That was made in a rate hearing in this room.

Q. Mr. Pringle, it is a matter of common knowledge that people outside of your organization know that there is only one company from whom you can buy gas in Ohio; that is true, isn't it, you have to get your gas directly or indirectly from the Columbia Company?

A. Yes.

Q. There isn't any other possibly source of supply?

A. I don't know of any other personally.

Q. From a practical standpoint?

A. I don't know of any.

Q. What did you write the letters for?

A. Sir?

Q. What did you write the letters for?

A. For the same reason, it seemed like there was an inference that good faith had not been used in entering into the previous contract under which we operated. We tried to bring out that that was the best contract obtainable.

Q. You knew the letters were a vain gesture——

A. May I finish?

Q. If you just answer my question and quit.

A. I am trying to.

Mr. Bentley: He is trying to answer the question.

Mr. Hebel: I think I would like to object to this line of questioning. That all was gone over in the earlier hear- [fol. 580] ings when Mr. Curtain was on the stand, the

whole subject matter was inquired into on cross-examination?

Mr. Light: May I inquire from the gentlemen why you asked about it yesterday if it had all been gone into?

Mr. Hebel: I didn't ask about that.

Q. What is the question? Are you still answering the same question?

A. I was endeavoring to when I was interrupted.

Q. Well, let's start over. Now, you knew that there wasn't any use to write any letters—wait until I get through with my question.

A. I haven't said a word.

Q. You knew there wasn't any use to write any letters because there was no other place you could get a supply of gas, but in order to look like it, you made an effort, you wrote to the council and the distributing company in Cleveland?

Mr. Marshall: Is that a fair cross-examination of a man that said he didn't write them?

Commissioner Bricker: I don't think it has much to do with it one way or another. The Commission knows, I think, of its own knowledge, that you haven't any other place you could get a supply of gas and it further knows that no council would likely have any idea where you could find any natural gas, not being in the natural gas business.

Mr. Light: The only thing I was asking is to bring out the ridiculous thing that was brought out yesterday about writing letters to find out where you could get gas. It seemed to be important enough to ask the witness on direct examination.

Commissioner Bricker: I think that doesn't make any [fol. 581] difference.

Q. Mr. Pringle, yesterday you were asked to learn whether or not the United Securities Company or something was an Insull subsidiary?

A. Yes.

Q. Is it?

A. I don't know, Mr. Light.

Q. You were to find out?

A. We left here about five o'clock.

Mr. Hebel: Mr. Bricker asked me if I could find out about that for this morning, and I haven't been able to.

Commissioner Bricker: Will you get us the information?

Mr. Hebel: I will get what information I can. I can say this, I don't think it will have to be corrected, that it hasn't any connection whatever with the Midland United.

Commissioner Bricker: Any relation it has to the holding company on back, if it is an intercorporate connection of any kind, let us know what it is.

Mr. Hebel: Of course, it is common knowledge that the Utilities Securities Company has Insull connections.

Commissioner Bricker: That is our information on it, we don't know just what it is.

Mr. Hebel: What it is, I can't say.

Commissioner Bricker: You will find out and write us? Send a copy of the letter to Mr. Light.

Mr. Hebel: That is all that we have to offer in chief.

Mr. Light: As was indicated yesterday, we would like to have an adjournment for ten days or two weeks to prepare counter exhibits and analyze these exhibits.

And thereupon an adjournment was taken until Friday, July 1, 1932, at 10:00 o'clock A. M.

[fol. 582] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

No. 5137

In the Matter of the Appeal of West Ohio Gas Company from an Ordinance Passed by the City of Lima, Ohio, March 19, 1928, Ordinance No. 2675, Fixing the Maximum Price to Be Charged for Gas in the City of Lima, Ohio, for a Period of 5 Years from and After the Effective Date of That Ordinance

Proceedings

Before Honorables E. J. Hopple, Chairman, Frank W. Geiger and John W. Bricker, Public Utilities Commissioners, Friday, July 1st, 1932

Appearances:

Messrs. E. W. Hedel, Charles C. Marshall and H. O. Bentley, on behalf of West Ohio Gas Company. Messrs.

Melvin C. Light and Elmer E. Welty, on behalf of the City of Lima.

[fol. 583] Morning Session

Friday, July 1st, 1932.

Chairman Hopple: The matter for hearing at this time is the appeal of the West Ohio Gas Company, number 5137.

Are the appearances the same as at the last hearing?

Mr. Bentley: Yes.

Mr. Light: Yes.

Chairman Hopple: At the time of the last hearing I was called away in advance of the conclusion of the hearing of the Lima case. To what extent did the Lima case progress?

Mr. Bentley: It had progressed to the stage where the city is ready to offer some exhibits.

Chairman Hopple: The Kenton case has not been heard?

Mr. Bentley: Partially heard.

Chairman Hopple: The Company has presented its evidence on the question of revenues and expenses in both cases?

Mr. Bentley: But in neither case has the cross examination of the company's witnesses been completed, nor has the city introduced any evidence.

Chairman Hopple: So the city may go forward with the case where it was ended the last time.

[fol. 584] Frank L. Pringle, recalled for further cross-examination, being first duly sworn, testified as follows:

Cross-examined by Mr. Light:

Q. You are the same Mr. Pringle who testified heretofore in this cause?

A. I am.

Q. At the time of the last hearing you were to procure and furnish copies of the invoices from the Midland United Company for their charges to the West Ohio Gas Company for the twelve months period of 1931?

A. Yes.

Q. Do you have those invoices with you?

A. I have the statement which—the information furnished that is copied from the invoices received from the Midland Company.

Q. Instead of the invoices you have made a schedule breaking down the item of $6,625.00?

A. I wouldn't say a breaking down. The statement you have in front of you is the amounts that appear on the Midland Company's monthly invoices received.

Q. It is an itemization of the $6,625.00?

A. Yes.

Mr. Light: I will ask that this be marked for identification.

And thereupon the document above referred to is marked for purposes of identification herein as City's Exhibit A-1.

By Mr. Light:

Q. City's Exhibit A-1 is the itemization of that?

A. Yes.

Q. Do the items on the invoices from the Midland Com-
[fol. 585] pany appear just as they appear on City's Exhibit A-1?

A. Yes.

Q. That is to say in January, 1931, you received an invoice just as this appears here with all the items on it under the word "January" on Exhibit A-1?

A. Yes.

Q. And there is no further itemization of that?

A. No, sir.

Q. You have "Statistical, $119.77" on your invoice?

A. Yes. This is an exact copy of the invoice.

Q. What does the service in the Secretarial Department include?

A. The expenses here as shown on the City's Exhibit are expenses incurred by the Secretary of the company in connection with matters concerning our company.

Q. What, for instance?

A. Keeping of all secretarial records of the company, in fact any work concerning secretarial work of the company performed by the secretary who is located in Chicago.

Q. That is the secretary of the Midland?

A. Of the West Ohio Gas Company.

Q. Why would the Midland Company bill you for the service of the secretary of the West Ohio Gas Company?

A. The office they maintain in Chicago—the secretary of our company is employed by Midland Company and a record is kept by the secretary's office of all works performed by his office in connection with the West Ohio Gas Company and are paid by the Midland Company. Then we in turn are billed for that amount.

Q. That is to say the Midland Company, which company owns your entire issue of common or voting stock, employs the secretary, pays the secretary and bills you for it?

A. May I get you to modify what you mean by that? In [fol. 586] other words I will answer it this way. The West Ohio Gas Company does not pay the secretary's salary, no salary. This is expense other than the secretary's salary in connection with the operation of our company.

Q. This is personal expense of the officers of the Midland?

A. I would say all work in connection with secretarial work.

Q. You mean personal service or personal expense?

A. Expense of the operation of the office; no personal expense or salaries involved.

Q. Then you have secretarial department and accounting department and statistical department and so forth?

A. Yes.

Q. I will ask you again, the Midland employs these people, pays the secretary and the treasurer, then bills you for that service?

A. Not in the entire detail. When it comes to the matter of personal services by the different employees in the Chicago office, a time ticket is kept showing the amount of time that that particular employee uses in the interest of our company and we are billed for that particular service spent on the company.

Q. Then this is not money paid by the Midland to these various employees?

A. It may be salary, it may be other expense in connection with the work, and supplies.

Q. I am asking whether or not the Midland pays these people and keeps some sort of system on their books in Chicago where they say so much shall be paid by the West Ohio Gas Company and bill you for that?

A. Yes.

Q. You do not have on your invoices or these billings any more information than you had before the Commission on [fol. 587] this City's Exhibit A-1?

A. That is right.

Q. Only as a matter of fact from personal recollection of something would you know what it was for?

A. The records are always available any time. On a number of times we have questioned invoices and asked for more detail on them and satisfy ourselves if the charges are right.

Q. Unless you question them you don't know whether they are right?

A. We know the services are actually rendered for our company.

Q. At the time of the adjournment you were further going to furnish information as to your house heating and industrial consumers, and you have included that on City's Exhibit A-1?

A. No, sir, it is separate.

Q. It is on the same sheet of paper?

A. The one you have before you, you didn't designate that as City's Exhibit A-1. This is the one designated as A-1 (indicating).

Q. The copy you furnished me is different from the one you have here?

A. Yes, two separate sheets.

Mr. Light: I will ask that this document be marked City's Exhibit A-2.

And thereupon the document above referred to is marked for purposes of identification herein as City's Exhibit A-2.

By Mr. Light:

Q. I hand you City's Exhibit A-2; that is a schedule of the last five years of the number of industrial customers you have and the number of house-heating customers you have?

A. Yes.

Q. Your industrial rate is what, Mr. Pringle?

[fol. 588] A. The rate is the same as to our general customers.

Q. What is it?

A. The first 400 cubic feet or less per month, $1.25. For the next 9600 cubic feet $1.05 per 1000 cubic feet.

Q. I will ask you if it isn't a fact that your rate to industrial is $3.00 to the first 1000 feet and 70 cents thereafter.

A. No, positively no.

Q. And you haven't so testified?

A. No, sir, I have testified our house-heating rate was the rate you just named for our industrials.

Q. I will ask you if your industrial rate isn't less than your house-heating.

A. No, sir. The way you look at it, you figure it on the average cost a thousand on a certain quantity of gas sold.

Q. Well, on the quantity you sell?

A. We charge for industrial the following rates: the first 400 cubic feet or less per month $1.25;

For the next 9600 cubic feet $1.05 per 1000;

For the next 15,000 at $1.00 per 1000, and all over 25,000 at 75 cents.

The house-heating, the rate is the first 1000 cubic feet or less per month $3.00 and all gas used in excess of 1000 feet at the rate of 70 cents per 1000.

Q. Could you be mistaken in what you actually charge your industrial users?

A. Could I be mistaken?

Q. Yes.

A. I could not imagine so.

Q. In understand you are testifying to the Commission that the schedule you have just computed is what you charge your industrial users.

A. Yes.

[fol. 589] Q. You are positive about that?

A. Yes, I feel convinced it is.

Q. This is the class of customers secured by your New Business Department?

A. Yes.

Q. At an expense of ten to twelve thousand dollars per year?

A. It runs something like that, yes.

Q. You have been losing customers in your industrial in numbers in the last three years, but the customers you have retained have used more gas?

A. Yes.

Q. It costs your domestic consumers $1.00 to $1.20 per year for this New Business service?

A. It costs the who?

Q. Your domestic consumers.

A. I have never computed any cost upon domestic customers for the expense of the New Business Department.

Q. Well you have a little less than 10,000 customers?

A. Right.

Q. And if your expense is $10,000 to $12,000 per year and you divide that by the customers, you have $1.20, haven't you?

A. Yes.

Q. Did you have any industrial or house-heating customers before you established this New Business department?

A. Very little sales. I do not recall, it was negligible.

Q. Have you changed your price any?

A. No, sir.

Q. In the last five years?

A. Our price was reduced on January 1st, 1926.

Q. To industrial and house-heating customers?

A. All classes of customers.

Q. In 1926?

A. Yes.

Q. Has there been a reduction since that time?

[fol. 590] A. I think the house-heating rate was filed since that time if I am not mistaken.

Q. Haven't you in the last year or so made concessions to your industrial users?

A. Not to my knowledge.

Q. Could that have occurred and you not know it?

A. A lot of things could occur.

Q. Don't you keep the books?

A. Well, not literally—I don't know.

Q. So you may have made concessions to your industrial users in the last two or three years and you not know it?

A. It is possible, yes.

Mr. Light: We are offering in evidence the City's Exhibits A-1 and A-2.

Chairman Hopple: They may be received.

And thereupon the documents above referred to are admitted in evidence on behalf of the City of Lima, and are

herewith submitted and marked respectively City's Exhibits A-1 and A-2.

By Mr. Light:

Q. Mr. Pringle, your sale in Lima of your mixed gas averages you, taking in your industrial, your house-heating and your domestic consumers, approximately $1.25 per 1000?

A. The revenue received?

Q. Yes.

A. Yes, approximately.

Q. Your first 1000 feet is on the basis of about two dollars and eighty-some cents ?

A. About $1.88.

Q. You are familiar, Mr. Pringle, with the fact that natural gas is being retailed throughout the state of Ohio at [fol. 591] 80 cents and less down to below 50 cents?

Mr. Hedel: I object on the ground that it is immaterial. The question here is what price gas must be sold, taking into account the expense and cost of gas to the company.

Chairman Hopple: It isn't very material, but I don't think it is fatal. Generally I think there are some things we all have notice of. It may come in.

The Witness: Yes.

Chairman Hopple: There is no evidence, by the way, that it is a correct price. It is just a price.

By Mr. Light:

Q. You have in Lima what you will say is an efficient plant?

A. Yes.

Q. Properly assembled?

A. As far as I know, yes, it is.

Q. Will you please tell the Commission why your average price in Lima is $1.25 when other prices in Ohio range from 50 to 80 cents? What is there different about your plant than other plants?

A. Well the same thing is different about that for the reason that Van Wert charges $2.50 and yet we are half that price. The same question enters here.

Q. Could that price be fair; Van Wert has a strictly artificial plant and is not comparable with the Lima plant?

A. We have strictly an artificial plant.
Q. You have a mixed plan.
A. We make manufactured gas in Lima.

Chairman Hopple: Do not argue about it. I think the question originally as put is capable of answering, if you wish to render an opinion, if you know. Relatively, as a matter of opinion, if you know, what gives rise to the difference or fluctuation in price as referred to in the question? [fol. 592] The Witness: Have you any particular instance in mind?

By Mr. Light:

Q. Well, take Springfield or Toledo or Columbus, Cleveland or Akron, Mansfield, Hamilton.

A. Take Toledo for instance. I think it is recognized that volume is the keynote of all business. The greater quantity of gas or any other product you might sell, the cheaper you might sell it. In the first place we are on a manufactured gas in the city of Lima and Toledo is on a straight natural gas basis. We are obliged to buy our natural gas from whatever market it is available. We pay in a lot of instances more for the natural gas at our city gates than is charged the customer at the burner in certain other towns, Findlay for example. One reason for that in Findlay the company that distributes gas there, the Ohio Fuel Gas Company, is a producer and also supplies us with gas for which they charge 55 cents. On the other hand, the price being charged in Findlay—that company may be making an earning and it may not be making an earning. There are conditions that probably exist in Findlay and other places that do not exist in Lima, and you cannot find two companies with the exact set-up. We are a little different than the majority. Frequently and persistently the price of manufactured gas in Lima is compared all ways with natural gas. You never hear any mention made of "where is the price Lima has compared with the price in Michigan, Pennsylvania and Indiana or Ohio? Where the prices are greatly in excess of the price charged by us. Of the manufactured gas distributued in Ohio there are but one or two instances wh[illegible] it is sold at less than we charge for it. The majority of manufactured gas companies in the state of Ohio charge decidedly more than does

[fol. 593] the West Ohio Gas Company. Because they may charge $2.50 in Van Wert for their manufactured gas is no reason why we should charge the same price for Lima, because you must necessarily take into consideration the amount of your investment; your operation and all the various improvements that go into computing gas is the way you arrive at the price.

Q. Your average cost of production is about 35 cents?

A. Somewhere along there.

Q. If you got your gas for nothing, you would still be above these other cities, your average price at $1.25?

A. Did you take into consideration in finding the average price per thousand revenue received that it is higher by virtue of the fact that the first 400 cubic feet is $1.25? If you don't use any gas whatsoever your bill is $1.25, so the average is held up by virtue of the first 400 cubic feet per month.

Q. If you should double your sales with the exception of the cost of production or purchase your expenses would not be appreciably or seriously increased?

A. Not a whole lot.

Q. If you would substantially increase your sales you would be able to decrease your price?

A. Yes, if.

Q. If the answer to my question just one thing, you have answered by saying it is a matter of volume?

A. No, sir, not altogether.

Q. What else could there be?

A. You may charge a person a certain fee for doing certain legal work when some other attorney may charge decidedly more for that particular kind of service.

Q. Your rates are fixed on that sort of an idea?

A. No, sir, I am just trying to reason with you. This other man may have a higher cost of operation than you [fol. 594] have, and would charge more for identically the same service you render. Because you may charge someone twenty-five dollars for a piece of work is no reason——

Q. Then your cost of operation in Lima is more than elsewhere?

A. No, sir, I do not say that. You must take into consideration the amount of property involved, your investment, your ordinary and necessary operating expenses, and your return on investment. Now the ultimate rate may

be higher and it may be lower. I could sit here two days and name off thousands of towns charging more for gas than Lima. I can name you lots of towns charging less than Lima, but that is no reason why Lima should charge the same price. You must consider the things necessary for the operation of the company in Lima, Ohio, in Van Wert or Toledo or Columbus.

Q. But you still agree that if you could increase your volume you could lower your price?

A. I feel that way about it, yes.

Q. Pretty much in proportion to your increase?

A. I would not venture an opinion on that but I would think——

Q. The reason you cannot be real positive is because you haven't tried it?

A. Well yes, we have had that experience. Back in 1926 we reduced our rate.

Q. You didn't reduce it substantially; you reduced it from $1.15 to $1.05.

A. Ten cents a thousand. I think that is quite a decrease.

Q. But you never operated at $1.15?

A. We did from April 1st, 1925, to January 1st, 1926.

Q. That wouldn't be long enough to get the effect on your experience, would it?

A. No, sir, I suppose not.

[fol. 595] We again agree that in the last ten or twelve years you have not tried reducing your rate to increase your volume?

A. No, sir, not actually we have not.

Q. And only in a general way would you know that the increase in volume would enable you to reduce your price, the only way you know actually——

Chairman Hopple: Aren't we indulging ourselves in a speculative field too much? Revenues and expenses—and this philosophy or what we might visualize certainly are not related to the case.

Mr. Light: We are taking this position before the Commission, as expressed by counsel for the gas company the other day, that the present rate on which these schedules are presented to the Commission is prohibitive. We are here before this Commission on an appeal from a rate ordinance in the city of Lima. The gas company says that

ordinance is not fair and reasonable and at the same time we say they have never tried it. This Commission has to determine whether or not that ordinance is fair, and the only thing before this Commission is the experience under a schedule of rates which Mr. Marshall has said and which we say is prohibitive. If according to the schedules as filed with this Commission it becomes necessary for this Commission to increase these rates in order theoretically —and there is a lot of theory in these rate cases. Theoretically you have got to increase your rate using their schedule in order to give them the proper return on their investment. If this Commission increases the rates their volume goes down. I don't think we are in any theory when it certainly is a well-known fact that it doesn't take [fol. 596] an economist to know that price regulates volume. The witness just testified if they increased the volume they could reduce the price. Now then we are saying to the Commission in this case that this price should go down, increase the volume and bring about a fair rate. The Commission in order to do that has to be dealing with theory because there are no figures because they have not had any experience with any other rate than the one they are operating under. There isn't a lawyer in the United States that can't prove that the rates they are charging are not enough to bring in a proper income on their investment and if they do not reduce the rates they are going out of business. We are getting into prohibitive figures with the gas company. The customers are saying "If the gas company will reduce their price we will buy more gas, increase their volume and get us a fair rate."

Chairman Hopple: I think you ought to confine your examination to the direct questions so far as your cross examination of the witness is concerned, and avoid speculation. I think we are wasting—just strike out that word "wasting"—I think we are taking time unnecessarily when we indulge ourselves that way. I think when you have asked this witness the direct question, as for example "If you increase your volume doesn't it follow that you could reduce your rates?" or something similar to that, and if the witness says "Yes," I can't see what you can get from the witness more than that.

Mr. Light: May I say I wasn't going to ask any more questions along that line.

Chairman Hopple: In addition, if you have other proof of your own, I think that is the place for the introduction [fol. 597] of the evidence.

Mr. Light: The Commission is right and the probabilities are I am using this witness to call the Commission's attention to something that is already in the case. That is all I have.

Redirect examination.

By Mr. Hedel:

Q. Mr. Pringle, do you know what the average use of gas per meter by the residential customers in Lima is as compared with the average use per meter by residential customers in other communities using manufactured gas?

A. In Lima somewhere around 1900 cubic feet the last time I remember; as far as I know, our average consumption in some instances is higher per meter than it is in some other towns.

Q. Do you know how many towns you have made a comparison in?

A. No I can't recall that now.

Q. That is for residential consumption?

A. Residential use, yes.

Q. On this New Business expense item, does your New Business department or your department that attempts to create new business and hold existing business do work in connection with the residential distribution of gas as well as sales to industrial and house-heating concerns?

A. Yes.

Q. Directing your attention to City's Exhibit A-1, I believe Mr. B. P. Sharon is Secretary of the West Ohio Gas Company?

A. Yes.

Q. And he is also Secretary of the Midland Utilities Company?

A. Yes.

[fol. 598] Q. Isn't it a fact that no charge by the Midland Company is made for any services performed by Mr. Sharon himself?

A. None by Mr. Sharon.

Chairman Hopple: Is it in the record?

Mr. Light: Yes, same testimony.

Chairman Hopple: All right.

Mr. Hedel: I presume it is understood that nothing that went in the record this morning can be construed as evidence that Mr. Sharon is paid any salary by the West Ohio Gas Company. I think the matter was confused by a direct examination this morning and I want to clear that up if it isn't clear, because it was at the last hearing definitely testified he was not paid any salary, and that is the fact.

Mr. Light: It has not been changed this morning.

Mr. Hedel: That is all.

Recross-examination.

By Mr. Light:

Q. You say that your average domestic consumption is higher than some cities and lower than others?

A. The last time any computation was made I remember that was correct.

Q. I observe your consumption per customer is higher in Lima than in Van Wert.

A. I don't know.

Q. And it is lower in Lima than it is in Columbus or Toledo.

A. I don't know.

Chairman Hopple: Is there information, statistical data, on the subject available——

The Witness: I assume that you can get in touch with [fol. 599] these companies and find out how many domestic consumers they have and the quantity of gas they sell to the customers. You can get the average sale per meter.

Chairman Hopple: It isn't any public information?

The Witness: No, sir, only what is contained in those particular companies.

Mr. Hedel: I might say we can secure that data for the companies that are connected with the Midland Utilities Corporation operating in Indiana and Ohio and furnish it for the Commission's information, showing the specific per customer use.

Mr. Light: May I suggest that information is on file already with this Commission in the annual reports for the various companies in Ohio. I don't think the Midland Company would help us materially here.

The Witness: Mr. Light was saying the annual report of the utilities to this Commission shows the total number of customers in total, but the customers are not divided as to each class, so in order to find the domestic sales you must know how many domestic customers you have.

Mr. Light: They are not separated into house-heating and domestic?

The Witness: The sales are, but the number of customers is in total.

Mr. Light: That is all. Mr. Allensworth may take the stand.

[fol. 600] H. R. ALLENSWORTH, recalled as a witness on behalf of the City of Lima, being first duly sworn, testified as follows:

Examined by Mr. Light:

Q. You may state your name.

A. H. R. Allensworth.

Q. You are the same witness who appeared in this case as a witness on the matter of values?

A. Yes.

Q. In addition to making an examination and study of values of the West Ohio Gas plant at Lima, tell the Commission whether or not you have made a further study and examination and analysis of their cost of operation.

A. I have done so, yes.

Q. Including the amount available for return on investment and depreciation and all the items that go to make that up?

A. Yes.

Q. The Lima plant consists of the transmission main about 44 miles long which transports natural gas into the city, and which is included in the appraisal at something like $400,000.00?

A. Pardon me, I don't think of it in quite those terms. The Lima plant is the property and appurtenances used directly in the distribution of gas in the city of Lima. The West Ohio Gas Company owns a transmission line about 44 miles long which transmission line delivers natural gas to the city of Lima for mixing with the water gas manufactured at Lima.

Q. I didn't intend to go into any detail. The Lima plant includes the transmission line 44 miles long which belongs as a part of the Lima plant and is used to transport natural [fol. 601] gas to the city gates?

A. With the qualification, yes, that is right.

Q. And it also includes an artificial plant located within the city?

A. Yes.

Q. Both are included as a part of the used property of the West Ohio Gas Company at Lima?

A. In the valuation by the Commission, yes.

Q. The transmission line is large enough to supply double the requirements of Lima?

A. Yes.

Q. And the artificial plant is large enough to supply three times the needs of Lima, either independent of the other?

Mr. Hedel: I object on the ground that the question of the value of the property used and useful in serving the city of Lima has already been determined as a final valuation.

Chairman Hopple: Let it go for the time being.

Mr. Light: If it isn't connected up it may go out.

(Question read.)

The Witness: No, sir, I do not think it is quite that large. I think it is one third too large to meet the requirements of Lima.

Q. In the process of fixing the value of the used and useful property at Lima, from an engineering standpoint I will ask you whether or not it was impossible to separate those items so you could reduce them down to what it would be, the value of what other service would be worth; that is to say the transmission line being double the size needed and the artificial plant being in excess of the requirements, still from an engineering standpoint, in trying to arrive [fol. 602] at a value it presented an impossible problem to reduce that to some figure that would be comparable to what would be required if the transmission line was just big enough to supply Lima with the artificial plant?

Mr. Hedel: I object.

The Witness: No, sir, that is not impossible.

Mr. Hedel: May there be an objection to each question?

Chairman Hopple: Yes.

The Witness: It is not impossible, and I addressed myself to that subject in my testimony before the Commission and testified that the transmission line was twice the capacity necessary to supply Lima with the amount of natural gas then being used; that the manufacturing plant was one-third in excess capacity to produce the amount of manufactured gas then being produced. I testified further that no part of the transmission line should be included in the valuation of the property used and useful in distributing gas in Lima.

Chairman Hopple: In other words, you sought in that part of the case at the time it was heard to equalize the three different classes of property so as to bring it down to what in your opinion would reflect a reasonable figure for the value of the property used and useful?

The Witness: I did, yes.

By Mr. Light:

Q. That presented to the Commission at least a very difficult problem to solve?

A. Yes.

Q. To try and arrive at any fair figure at that time?

A. Yes.

Q. And I believe was not attempted in this matter in the valuation as fixed?

A. In the valuation as fixed they are included. What [fol. 603] attempt was made, I can't answer that.

Q. If it was attempted it was not accomplished?

A. No, sir it was not accomplished.

Q. Mr. Allensworth I will ask you whether or not you have reduced your study of the income and cost to the West Ohio Gas Company to written schedules.

A. I have.

Mr. Light: I will ask that this document be marked City's Exhibit A-3.

And thereupon the document above referred to was marked for purposes of identification herein as City's Exhibit A-3.

By Mr. Light:

Q. I will hand you City's Exhibit A-3, and ask you whether or not that is your study reduced to the schedules?

A. It is.

Q. Can you turn to page one of your Exhibit A-3. The page one is the set-up of an average year, 12 months period, and the average is taken from the period of March 31st, 1928, to December 31st, 1931, is that correct?

A. That is correct.

Q. It is a period of three years and nine months?

A. Yes.

Q. And from that period you have made up this average twelve months period?

A. Yes.

Mr. Hedel: This exhibit purports to be a study of revenues and expenses. I don't know wether they are right. Apparently many of them are based upon opinion. I think it is wholly improper to examine this witness on this schedule unless there is some foundation made that he either by experience or training had some basis to qualify as an expert upon which to analyze operating expenses and revenues. There is nothing in the record that shows Mr. [fol. 604] Allensworth is an accountant or has any basis for making up such a report as this.

Chairman Hopple: You have the right to examine the witness at this point. I was not assuming there was any question going to be raised as to whether he was or was not qualified, but you may examine him right now.

Cross-examination.

By Mr. Hedel:

Q. Mr. Allensworth, are you an accountant?

A. Yes.

Q. How long have you been an accountant?

A. Since 1916.

Q. What training or preparation did you have for accounting work?

A. I have studied accountancy; I have qualified as the accountant, an engineering accountant, before courts and commissions.

Q. What do you mean by an engineering accountant?

A. An accountant who deals with books of accounts from an engineering standpoint as distinguished from the standpoint of the commercial auditor or accountant.

Q. What distinction do you make between an engineering accountant or dealing with books from an engineering standpoint and a commercial accountant?

A. It is my uderstanding that the commercial accountant in auditing a set of accounts will run his audits and determine whether or not the entries balance on the accounts. The engineering accountant is more concerned as to whether or ot the original entries correctly reflect the results of the transaction.

Q. What transactions do you mean, any expenses in connection with the operation of the business?

[fol. 605] A. I mean the transaction that may be reported and revealed in the account that is being analyzed.

Q. What schooling or training in accountancy have you had?

A. I have studied accountancy for a matter of twenty years.

Chairman Hopple: The question doesn't justify the answer you are giving. Please answer the question.

(Question read.)

The Witness: Private study.

By Mr. Hedel:

Q. Have you ever taken any courses in accounting or in schools or institutions?

A. Yes.

Q. What?

A. The Alexander Hamilton course of business technique.

Q. That is the correspondence course?

A. Yes.

Q. You have never attended any schools and studied accounting?

A. No, sir—pardon me, I did.

Q. Where and when and how long?

A. The High Schools in Columbus and the grammar grades in Columbus.

Q. What courses in accounting did you have in the high school in Columbus?

A. The courses given and as set forth in the high school curriculum.

Q. How many such courses did you take?

A. The one that was in vogue in high school when I was there.

Q. One year's work?

A. No, sir, I attended high school two years.

Q. Did you take accounting both years?

A. I can't answer that, I do not know. I cannot remember back that far, but I remember that we had the elements of accounting in the grammar grades.

Q. Do you remember how many courses in accounting [fol. 606] you took in the grammar grades?

A. I don't know anything about courses. I said we had instruction in accounting.

Q. You mean you do not remember what courses you had in the grammar grades or in high school?

A. I am saying I do not remember it was courses. There was instruction in accounting. I don't know whether it was a course.

Q. How many hours a week did you take accounting when you were in the grammar grades?

A. I do not remember.

Q. How many hours' instruction did you have in there during the whole time you were in the grammar grades?

A. I could not tell that.

Q. How many different years while you were in the grammar grades did you study accounting?

A. I wouldn't say positively, but if my recollection serves me correctly it would be one school year.

Q. In what year, the eighth grade in the grammar school?

A. The grade preceding high school.

Q. How many hours instruction did you have in accounting in high school?

A. I can't tell you.

Q. Do you know about how many?

A. I do not know.

Q. You don't know whether you took it both years or not?

A. I am quite sure but I won't be positive.

Q. Who was your instructor in high school?

A. I couldn't tell you that, that is long ago.

Q. Do you remember what text books you used?

A. No, sir.

Q. Did you use any text books?

A. Presumably so, although I don't remember.

Mr. Light: We will secure the names of the text books.

Mr. Hedel: Aside from these courses you say you had [fol. 607] in grammar and high school, have you had any other instruction in accounting except what you got through the correspondence course?

A. Yes.

Q. Under what instructors?

A. No instructor, private study.

Q. Did you complete the Alexander Hamilton course?

A. Yes.

Q. Did you receive a degree from that correspondence school?

A. No, sir, I don't think so. I got a certificate.

Q. Are you a certified public accountant in any state?

A. No, sir.

Q. Have you ever taken an examination to qualify as a certified public accountant?

A. No, sir.

Q. Did you ever work for any accounting firm or organization as an accountant?

A. No, sir.

Q. Did you ever work for any public utility as an accountant?

A. Yes, sir.

Q. What public utility?

A. I had in charge and the responsibility of all of the accounting having to do with valuations and rate procedure for the Ohio State Telephone Company and like responsibility for the Tri-State Telephone and Telegraph Company, and in that connection qualified as an accountant before the Minnesota Railway and Warehouse Commission.

Q. You mean by that you were employed in connection with a rate case in valuation matters by that company?

A. Not quite that. I was employed as valuation engineer. I had charge of all rate cases, not a rate case.

Q. For the Ohio State Telephone Company?

A. Yes.

Q. And it was in that case you had access and did work [fol. 608] in connection with their accounts?

A. Yes.

Q. You weren't an accounting officer for that company?

A. No, sir.

Q. You did not have charge of the keeping of accounts for that company?

A. No, sir.

Q. You mean you made some study of their accounts in connection with your work as a valuation engineer?

A. I did more than that. I made audits of certain accounts in that connection.

Mr. Hedel: I think that is all we care to show about the lack of qualifications of this witness.

Chairman Hopple: You still insist upon your objection?

Mr. Hedel: Yes.

Chairman Hopple: I take it you made an objection?

Mr. Hedel: Yes. This witness is not qualified to make a study and report as to the operating expenses and revenues of the company, and not competent to testify as an expert witness on that subject.

Mr. Light: I will ask you to state whether or not the figures used in Exhibit A-3 are taken from the books of the West Ohio Gas Company?

The Witness: Yes, they are insofar as expense accounts are concerned.

Mr. Light: Did you have any difficulty in securing these figures from the books? Did it present an auditing problem you could not solve?

The Witness: No, sir.

Mr. Hedel: Did you actually procure them from the books?

The Witness: No, sir, the detail work was done under [fol. 609] my direction and supervision.

Mr. Hedel: Who did procure them from the books?

The Witness: My assistant, Mr. V. D. Cahill.

Mr. Hedel: You never were at the office of the West Ohio Gas Company to procure the figures?

The Witness: I was not for the gathering of this data.

Mr. Hedel: And you never examined the books of the West Ohio Gas Company in any way?

The Witness: Yes I did.

Mr. Hedel: In connection with the operating expenses and revenues of the company?

The Witness: Yes I made some inquiry on some former occasions but not directly——

Mr. Hedel: Did you yourself examine the books of the West Ohio Gas Company at that time?

The Witness: Yes.

Mr. Hedel: You don't claim that these items of expense in here showing natural gas at 35 cents per m.c.f. are taken from the books of the company?

The Witness: That question will be asked by my attorney.

Chairman Hopple: Answer it.

The Witness: That is not taken from the books of the company.

Mr. Hedel: And many other items in this report are not taken from the books of the company?

The Witness: Yes, necessarily so.

Chairman Hopple: Do you still insist on your objection?

Mr. Hedel: Yes.

Chairman Hopple: The quality of an expert's testimony [fol. 610] may be either high or low, and that in turn would reflect the matter of credibility and weight to be attached. We are here trying to solve a question that has beeen bothering the citizens of these respective communities and the utility as well. I think we ought to proceed. The objection will be overruled and you may note your exceptions.

Mr. Hedel: I might suggest there is a point beyond which a man isn't even an expert.

Chairman Hopple: I have often wondered about that. You may proceed, Mr. Light.

Redirect examination.

By Mr. Light:

Q. The West Ohio Gas Company uses about 35 per cent natural gas, and this is purchased from whom?

A. The Ohio Fuel Gas Company.

Q. And who is the Ohio Fuel Gas Company?

A. The Ohio Fuel Gas Company is a public utility operating in the state of Ohio.

Q. I will ask you to state from the books of the West Ohio Gas Company what is paid per thousand cubic feet

by the West Ohio Gas Company to the Ohio Fuel Gas Company for gas, natural gas?

A. The billing price is 55 cents per thousand cubic feet.

Q. I will ask you to state whether or not you have made an investigation of the records of this Commission whether or not the Ohio Fuel Gas Company has any schedule on file with this Commission showing a 55 cent rate.

[fol. 611] A. It has not. That is a 55 cent wholesale rate, it has not.

Mr. Hedel: I object, it isn't material. The courts in this state have ruled—the Federal Court at least—that this wholesale rate isn't a rate that the Commission can control.

Chairman Hopple: In other words it is the contract rate?

Mr. Hedel: Yes.

Chairman Hopple: Yes, I think that is correct. You have shown what the rate was and whether it is a matter of contract, the witness can state, or whether it is a matter of a rate with the Commission you can state, but beyond that you should not go.

Mr. Light: We still think that the Ohio Fuel Gas Company, being a public utility, filing its reports here and showing its schedule of rates for different characters of service, comes within the jurisdiction of this commission and this Commission has a right to look at that rate and if the Commission has the view that the West Ohio Gas Company and the Ohio Fuel Gas Company have signed a contract at 55 cents that is binding——

Commissioner Bricker: Is there any claim that this contract is not made at arm's length?

Mr. Light: No, sir, I cannot offer any evidence to that.

Commissioner Bricker: I think we are precluded.

Mr. Light: Don't shut the door too tight.

Chairman Hopple: The witness may testify to certain material facts that are present in the picture, but some of those facts certainly are not open to explanation.

Mr. Light: All I asked was whether or not there was a schedule on file and what the price was.

[fol. 612] Chairman Hopple: Go ahead.

By Mr. Light:

Q. Go to page 1 of Exhibit A-3.

A. Yes.

Q. The first item there is the average quantity of mixed gas sold by the West Ohio Gas Company to its consumers, house-heating, industrial and domestic, in an average twelve-months period between March 31st, 1928, and December 31st, 1931.

A. It is. That is the sales within the city of Lima.

Mr. Hedel: I presume my objection against Mr. Allensworth's qualifications may go to each and every question asked in reference to this exhibit without special objection?

Chairman Hopple: That is correct.

By Mr. Light:

Q. In the exhibits before the Commission presented by the West Ohio Gas Company, particularly 103, 104 and 105, along in there, have any figures been presented to this Commission limited to the city of Lima?

A. No, sir.

Q. By the company?

A. No, sir.

Q. That is all schedules and exhibits presented by the company to the Commission to this date include the suburban area about Lima and also Cridersville?

A. Yes, that is my understanding.

Q. Which are beyond the reach of the ordinance in question?

A. Yes.

Q. Within the city of Lima they have had an average sale of approximately 381,000—that 381,153.4 is thousand cubic feet?

A. Those are thousand cubic feet, and you will pardon me, that is not approximately, that is axactly the amount recorded by the company as gas sales for the average twelve months period during this period.

Q. The next figure on page 1 is a sum of money, $386,-
[fol. 613] 137.90; what is that?

A. That is extending the amount of gas sold by the rate $1.013 per annum. The amount in cents per annum is shown in the last column to the right.

Q. That is to say if this gas were sold at an average price of $1.013 it would bring an income or revenue of $386,137.90?

A. Yes.

Q. Where do you get the $1.013?

A. That is the amount that would be required to pay an adequate return on the Commission's valuation, assuming that natural gas be purchased at 35 cents per 1,000 instead of 55 cents per 1,000.

Mr. Hebel: I object to the characterization "adequate return." That is to be determined by the Commission.

Chairman Hopple: I take it that is his opinion. It may stand. Objection overruled.

The Witness: That is the amount of revenue that would be produced by this rate on the assumption only that the consumption would remain constant or the consumption would be the same as experienced by the company under a higher rate.

Q. The present average price in Lima is $1.25?

A. In round figures $1.25 per thousand.

Q. If that figure is substantially reduced as a matter of fact what effect would that have upon the volume of sales?

A. The sales would be increased.

Mr. Hebel: I object, it is a conclusion without any foundation.

The Witness: Unless——

Chairman Hopple: Is that your opinion that that would be the effect?

The Witness: I have not completed my answer.

[fol. 614] Chairman Hopple: All right.

The Witness: Unless there is some peculiar situation in Lima that would violate all economic rules, and so far as I know there are none.

By Mr. Light:

Q. But the set-up on page 1 of your Exhibit A-3 is based upon the present volume in Lima?

A. Yes.

Q. The next item there is a figure of $113,064.44; what is that?

A. That is the cost of gas sold at the actual cost of producing the water gas as experienced by the company, plus the natural gas used for mixing with the water gas at 35 cents per thousand. May I suggest that the record in the Columbus case shows that the wholesale price for natural

gas at the city gates of Columbus cannot be more than the 26.34 cents per thousand. If this be true——

Commissioner Geiger: You said the record showed?

The Witness: The record in the Columbus case.

Commissioner Geiger: Do you mean you testified in the Columbus case it would be 26 cents per thousand cubic feet at the gateway?

The Witness: Yes.

Commissioner Geiger: What record is that?

The Witness: It is in the testimony in the Columbus case.

Commissioner Geiger: You mean you testified in the Columbus case?

The Witness: Yes.

Commissioner Geiger: Well, say that.

The Witness: Pardon me, I may be mistaken. I thought I was——

Commissioner Geiger: That is what we were worrying about.

[fol. 615] The Witness: I was referring to the transcript of the testimony as being the record. It is also shown in the brief of counsel in that case. I wanted to add if that be true, the fair wholesale price for natural gas at Lima cannot be possibly 55 cents and can't be more than 35 cents.

Commissioner Geiger: At that point you are familiar with the fact that we investigated the gate rate in the Columbus case on the theory solely that the company furnishing the gas was an affiliated company and while the contract rate might be 45 cents, yet the Commission was permitted to investigate. The point here is whether or not it is a company with whom this Lima company deals at arm's length and by a bona fide contract. How can you assume, or do you assume that they will be able to secure the gas at 35 cents whereas their contract is 55?

The Witness: I am not assuming that and I am not addressing myself to that subject. I am testifying that on the basis of my knowledge of the proper wholesale rate in Columbus and conserving the additional cost of transporting that gas to Lima, that the fair wholesale price tested on the same basis as in the Columbus case, cannot be more than 35 cents. Whether or not that fact is of any material aid to the Commission will be for counsel to argue.

Mr. Hebel: I want to object to all that portion of the witness's answer commencing with the discussion of what

the record in the Columbus case showed, first because it is not responsive to the question; second, it is immaterial and incompetent in connection with any issue involved in this case.

Mr. Light: Perhaps part of the answer is improper, to [fol. 616] say what happened in some other case.

Chairman Hopple: I think the objection should be sustained, keeping in mind that you are here in the capacity of an expert witness without reference—it is not necessary in our opinion to refer to the Columbus case to establish anything in the Lima case. Just give us your opinion.

By Mr. Light:

Q. Mr. Allensworth, from your experience as an engineer and your examination and analysis of the price of utility commodities such as natural gas, have you the means of knowing the reasonable market value wholesale of gas at Lima, Ohio?

A. Yes.

Mr. Hebel: At what time?

By Mr. Light:

Q. Covering the period of March 31st, 1928.

A. Yes.

Q. What is that fair market value wholesale at Lima, Ohio, March 31st, 1928?

A. In my opinion the maximum value would be 35 cents.

Chairman Hopple: And that would represent a fair and reasonable cost for the gas so purchased?

The Witness: Yes, in my opinion.

By Mr. Light:

Q. And in your schedule as found on page 1 of Exhibit A-3, you have used that price?

A. I have.

Q. In making up operating expenses?

A. Yes.

Q. In using that price you arrive at a cost of natural gas for operation over this average period of $113,064.44?

A. Pardon me, the cost of mixed gas during that average year.

Q. That is the mixed gas?

A. Yes.

Q. Using natural gas at 35 cents and the water gas at the cost as shown by the books of the company?

A. Yes.

[fol. 617] Q. I wonder what that cost is as shown by the books of the company, the average cost over that period?

A. That cost is shown for different periods on this exhibit on page 43 and subsequent pages. It also appears on page 31 and other pages in this exhibit. The cost of producing water gas as such cost was experienced by the West Ohio Gas Company—I am limiting the answer to the operating cost of water gas; for the calendar year 1931 it was 20.2 cents.

For the average twelve months during the three year and nine months period ending December 31st, 1931, it was 21.276 cents.

Other years are as follows:

The year ending March 31st, 1928, 27.028 cents.

The nine months ending December 31st, 1928, 22.4 cents.

The calendar year 1929, 22.33 cents.

The calendar year 1930, 20.43 cents.

Q. Going back to the first figure on page 1, I will ask you whether or not the amount of gas sold as shown by that figure is taken from the books of the company.

A. It is.

Q. The item of distribution expense, what is that?

A. That is the cost of distribution as experienced by the company during the average twelve months period as defined.

Q. Is that figure taken from the books of the company?

A. Yes.

Q. You have before you Company's Exhibit 104?

A. Yes.

Q. I will ask you whether or not the figure on distribution expense is in accord with the figures as presented to the Commission by the company.

A. They are not.

Q. In what respect do they differ?

A. The figures appearing throughout number 104, as I [fol. 618] understand the testimony of the witness, are for the Lima district which includes sales of gas outside of the city of Lima. The figures I am presenting are for the city of Lima.

Q. Other than that, is there any difference between the two figures, the figures you are using and the figures used by the witness Pringle for the company; are you using the same figures?

A. Using the same figures, same accounts.

Q. The next item is commercial expense. Is that figure taken from the books of the company?

A. It is.

Q. And is that the same figure presented to the Commission by the company?

A. It is not, for the reasons stated relative to distribution expense.

Q. With that exception is it the same figure?

A. I believe so. It should be. I can't answer that directly because I have not had in my possession a copy of this number 104. I thought I had, but I found in checking up I had copies of all the other exhibits but I did not have this one.

Q. The next item, New Business Expense, is that the actual figure that the books of the company show?

A. For the city of Lima, yes.

Q. The next item, General and Miscellaneous Expense, is that another item taken from the books?

A. Yes, taken from the books.

Q. That gives you a figure of $223,303.64 as operating expense?

A. Yes.

Q. And the next figure, $162,834.26, is the difference between the figure marked "Revenue" and your operating expense?

A. That is correct.

Q. The next item is the item of $35,579.32 depreciation?

A. Yes.

[fol. 619] Q. Is that figure found on the books of the company?

A. It is not.

Q. How do you arrive at that?

A. By making a study of the various classes and kinds of property comprised in the property used and useful in distributing gas to the city of Lima and taking thereon an annual charge for each particular class of property, of weighting that against the amount of property in each particular class, which produces the annual charge for de-

preciation so shown on this page in the amount of $35,-579.32. That is in fact 1½ per cent of the Commission's final finding as to reproduction cost of property used and useful in the distribution of gas to Lima consumers.

Q. That is a theoretical figure?

A. Yes.

Q. This Commission has made a finding of the rate of depreciation to be used in arriving at present value of this property. I will ask you to state, Mr. Allensworth, whether in arriving at the figure of thirty-five thousand dollars plus, $35,579.32, you used the figures as found by this Commission.

A. I did. The Commission in making its finding as to sound value or reproduction cost less depreciation, found first reproduction cost, second the amount of depreciation on the various classes and kinds of property, and lastly the reproduction cost less depreciation. The amount of depreciation as found by the Commission is studied, divided by the years of life of the various classes of property which would give the annual rate of depreciation as found by the Commission in its final order as its sound value. That is proof of the rate at which the property has depreciated as such depreciation is found and reached by the [fol. 620] Commission. Those facts, together with other facts, were taken into consideration in making this determination of 1½ per cent of the Commission's reproduction cost as being a proper annual charge for depreciation.

Q. So I understand that that rate is comparable to the depreciation found by this Commission in this case in arriving at the valuation?

A. Yes, it is.

Commissioner Bricker: You have not taken just the arithmetical figure from the amount in the depreciation reserve and calculated that as against the remaining life of the property?

The Witness: No, sir.

Commissioner Bricker: Have you taken into consideration those unobserved elements of depreciation which the statute contemplates in arriving at your annual charge?

The Witness: Yes, sir.

By Mr. Light:

Q. As a matter of fact from the books of the company what is the expense experience of the company on depreciation?

A. The actual experience of the company in meeting the expense of depreciation over the seven year period 1925 to 1931, was at the rate of 59/100 of 1 per cent per year of the company's book value of the property. The average for the last five years, that is five years ending December 31st, 1931—the actual experience of the company in keeping its expense of depreciation is one half of one per cent of the company's book value of property. That is the company's experience on the property as a whole and not segregated to the city of Lima. For the information of the Commission, if the company's actual experience is meas-[fol. 621] ured in terms of the Commission's finding as to reproduction cost, its actual experience is 9/10 of 1 per cent per year in meeting this charge for depreciation, whereas the allowance I have made in my set-up is 1½ per cent per year.

Q. The next five items in your schedule are all taxes?

A. Yes.

Q. Taken from the books of the company?

A. Yes, excepting as to taxes which are based upon income, in which case the tax rate extended against the amount of revenue shown at the top of the page; that is to say, that excise taxes, public utility maintenance tax, income tax, are a function of income. They are computed on the income or the revenue shown at the top of the page, as distinguished from the actual amounts paid by the company. The real and personal property tax is the amount of real and personal property tax actually paid by the company and allocated to the property used and useful in distributing gas to Lima consumers.

Q. And the last figure on the page is the amount which would be left available for return on investment?

A. It is, yes, in the amount of $94,400.98, which is equal to 5 per cent on the Commission's final finding as to sound value of the West Ohio Gas Company's property used and useful in distributing gas to Lima consumers, the amount thereof, or the amount of the Commission's finding as to sound value, being $1,888,019.61.

Q. That finding is at pages 68 and 69 of your exhibit?
A. Yes.
Q. You are using the figure of 5 per cent as being an adequate return——

[fol. 622] Mr. Hedel: I object unless it is shown he has some basis upon which to form an opinion.

By Mr. Light:

Q. You are using the figure, Mr. Allensworth, of 5 per cent, which, as I understand you, in your opinion is an adequate return. Will you please explain why you used 5 per cent?
A. In fixing the rate of return allowable on the Commission's final finding as to fair value of property used and useful in Lima gas operation, I am not unmindful, I do not believe the Commission would be unmindful of the fact that the date certain of its, the Commission's, finding is March 31st, 1928. During the years subsequent to this date certain and the years during which the ordinance rate here in question would have been in effect, commodity prices have been rapidly declining and today the decline still continues. The reproduction cost appraisal of this property at any date subsequent to the date certain of the Commission's finding as to fair value would produce amounts less than the reproduction cost as of that date. Furthermore in fixing the rate of return allowable on its fair value, I am not unmindful, I do not believe the Commission will be unmindful, that the West Ohio Gas Company in its operations as a whole had accumulated as an unexpended balance in depreciation reserve and amortization reserve as of December 31st, 1931, the amount $327,766.87.
Despite the statutory requirements so to do, the West Ohio Gas Company does not account for the money credited to the depreciation reserve as a fund and the return thereon as a credit to reserve.

Mr. Hedel: Are you reading that?
[fol. 623] The Witness: I am reading from my notes.
Mr. Hedel: I object.

By Mr. Light:

Q. Who prepared the notes?
A. I prepared the notes.

Chairman Hopple: Objection overruled.

Mr. Hedel: It ought to be shown the witness wrote what he is reading.

The Witness: I am reading from my memoranda prepared by myself. The moneys credited to the depreciation and amortization have been invested in property and the property appraised by the Commission as of the date certain comprises property built and/or acquired with the money credited to depreciation reserve.

In fixing the rate of return allowable on its fair value I am not unmindful, I do not believe the Commission will be unmindful, that the fair value found by the Commission as of March 31st, 1928, is sufficiently generous to offset additions to property accounts since that date. When all of these facts are taken into account and given due weight recognized together with other facts pertaining to rate of return, it is my opinion that the fair rate of return on this property will be found to be 5 per cent, or I should say not more than five per cent.

By Mr. Light:

Q. Throughout the entire Exhibit A-3, except as it appears from your notations such as figuring the natural gas at 35 cents or figuring the theoretical depreciation, are all your figures taken from the books of the company?

A. They are excepting this, that the books of the company are not kept for Lima city only and allocations are made, which allocations are revealed in this exhibit.

[fol. 624] Q. In this period covered by this exhibit, tell the Commission whether or not there has been any reduction in the expenses of the company in matters of salaries and wages.

A. I have observed no such reductions, no, sir.

Q. I will ask you to state, Mr. Allensworth, whether or not as a matter of fact the salaries and wages generally of the consumers of this gas have materially decreased in the same period of time.

Mr. Hebel: If he knows.

The Witness: I think it is common knowledge.

By Mr. Light:

Q. You have not attempted a theoretical set-up of what the distribution expense, commercial expense, new business

expense and general and miscellaneous expense items should be?

A. No, sir, I have not.

Q. Why not?

A. I do not believe that it would be entirely becoming of me to make such study. That is more in the nature of a study to be made by what is known in the profession as an industrial engineer or an efficiency expert. I do not attempt to qualify as such. I would like, if I may, to direct your attention to the fact that these figures appearing on page 1, on the review and check I find there are some slight excesses. The rate shown at the top of the column, 101.3 cents or $1.013, should in effect be $1.009. That is due to the fact that in compiling my data from the detail audits and working up this particular exhibit the indirect charges to construction and charges to reserve for uncollectible accounts were overlooked and not carried forward. When those corrections are made it changes the figures appearing on the page to a very slight amount because of the fact [fol. 625] that the indirect charges to construction are credit charges against operating expense whereas the uncollectible account is an expense. On- about balances the other. I should like later to submit corrected pages where those discrepancies appear in that exhibit.

Chairman Hopple: All right, you may.

By Mr. Light:

Q. Pages 2 and 3 is the actual experience of the company for the year immediately preceding March 31st, 1928, and is not included in your figures at page 1?

A. That is correct.

Q. I say that is the experience of the company. The exception to that is this, that instead of using 55 cents you have used 35 cents as the reasonable market value of the gas?

A. Yes.

Q. And you have used your own figure of depreciation which does not appear on the books at all?

A. That is correct.

Q. Pages 3, 4, 5 and 6 are annual periods, 1928, 1929, 1930 and 1931, from which the figures at page 1 are made up?

A. That is correct. I direct your attention that page 3 is the last nine months of 1928 following the date certain of the appraisal for that particular year.

Q. That so appears at the top of the page?

A. Yes.

Q. And page 7 is the aggregate figures for the period of three years and nine months?

A. That is correct, from which the average twelve months period is derived.

Q. On page 1?

A. Yes.

Q. And is the addition of pages 3, 4, 5 and 6?

A. Yes.

Q. Page 8 is the set-up the company would experience selling the amount of volume that they have now that would [fol. 626] be had under rates provided for in the ordinance from which this appeal is pending?

A. Pardon me, the volume distributed in the year 1928, yes.

Q. That is the year ending March 31st, 1928?

A. Yes, that is correct.

Q. You have again used your own figure of depreciation and your own figure of fair market value of 35 cents on the natural gas, and the rest of the figures are from the books of the company?

A. That is correct, with the explanation heretofore given as to the tax amounts.

Q. As to income tax?

A. Yes.

Q. And you have, on pages 8, 9, 10, 11 and 12, shown such an experience for the periods indicated using the present volume of sales, and then at page 13 you have made a total of the experience, three years and nine months ending December 31st, 1931?

A. That is correct, yes.

Q. And it appeared, Mr. Allensworth, that unless the volume—using the present volume, that the rates of the city ordinance are wholly inadequate to make a return on the investment?

A. These pages reveal that applied to the actual volume of gas distributed by the company that is true. It does not necessarily follow, however, that the ordinance rate

might not be a fair rate and produce a sufficient amount of income.

Q. Why not?

A. That involves the question if you increase the sales you lower prices and the response of sales to a lowering price.

Q. Can West Ohio Gas Company produce and sell a much larger volume of gas at approximately the same expense, except the actual production cost?

A. I should say so, yes.

[fol. 627] Q. Mr. Allensworth, do you know any way, or is there any available experience table that would show with any accuracy, increases of volume by lowering prices?

A. You are referring to gas sales?

Q. Yes.

A. I know of no such information applicable to the West Ohio Gas Company just in Lima. I have made such studies relative to other properties where there was in hand sufficient data to make a study.

Q. As a matter of fact, Mr. Allensworth, about the only way that the city or the company or the commission could ascertain that would be by actual experience?

A. That is my belief, yes.

Q. And in this case the West Ohio Gas Company has never undertaken to follow the rates fixed by the ordinance and therefore have had no experience from which we could furnish information to the Commission?

A. That is correct.

Q. So that at this time nobody knows what the result would have been had they followed the rate ordinance?

A. That is correct.

Q. Going to page 14 of your exhibit, what is the difference in the first column of figures, or what is the difference between the figures used at page 14 and the figures used at page 1?

A. Well I would like to answer that this way——

Q. No, pardon me. That is for the year ending March 31st.

A. If you will refer to page 19 I think you will get it.

Q. I mean to say what is the difference between the figures at page 19 and those at page 1?

A. The figures on page 1, as explained, have been based [fol. 628] upon the cost of gas sold using 35 cents per M.

as the cost of natural gas. In the statements appearing on pages 14, 15, 16, 17, 18 and 19, 55 cents has been used as the wholesale price of natural gas.

The other figures change in relative proportion; that is, tax amounts change in relative proportion due to the increased expense. That would affect only income tax.

Q. And which page do you have an average set-up for three years and nine months at 55 cents?

A. Page 19. That is the total three years and nine months.

Q. Do you have an average page here anywhere?

A. No, sir, I have not for this particular data. The cents column- are directly comparable to page 1 and other pages. The cents columns are the averages.

And thereupon a recess was taken until 1:30 o'clock P. M. of same day.

[fol. 629] Afternoon Session

Friday, July 1st, 1932.

And also—

H. R. ALLENSWORTH, resuming the stand, having been heretofore duly sworn, continued his testimony as follows:

Examined by Mr. Light:

Q. Going to page 19, that set-up is based upon the natural gas at 55 cents?

A. It is, yes.

Q. And indicates that considering the present volume, an average of $1.10 will make an available return on the valuation of 5 per cent?

A. That is correct, yes.

Q. The average at the rate the company is now using in Lima proper is about $1.25?

A. Yes.

Q. And in the Lima district about $1.29?

A. Yes.

Commissioner Bricker: I don't quite understand that. You say available for return on investment $354,003.68?

Mr. Light: That is three years and nine months.

Commissioner Bricker: This is for the three-year period?

The Witness: Yes.

Commissioner Bricker: Where do you have your percentage worked out?

The Witness: The return there shown is 5 per cent on the Commission's valuation per year, 5 per cent per year.

By Mr. Light:

Q. This is repetition, but I understand we do not have the figures on page 19 averaged down to a 12-months period. There is no page of that kind?

[fol. 630] A. No, sir, there is not, but may I suggest that if you think it would be helpful to the Commission I will be very glad to make one. It will only take a few moments.

Commissioner Bricker: Is there any variance in that?

The Witness: It would be just a matter of taking the first column so those amounts representing three years and nine months of operation would represent the average 12 months operation, and this page 19 would be directly comparable to page 1 where the 35 cent wholesale price of gas is used. Page 19 is based upon the 55 cent price of gas.

By Mr. Light:

Q. Take that first column and divide it by 3.75 you would have it for 12 months?

A. Approximately. We wouldn't go at it that way arithmetically but that would be the result.

Q. It would be exact?

A. Not quite.

Q. Page 20 is a theoretical calculation of what the company's experience would be using the ordinance rates and using 55 cents on their volume in the year ending March 31st, 1928?

A. That is correct, on the same basis as the other statements.

Q. And the following pages are similar figures for the periods indicated at the top of the page?

A. That is correct, yes.

Mr. Hedel: Do those parentheses have any significance?

The Witness: Yes, that is the equivalent of a red figure.

By Mr. Light:

Q. Then page 25 you have added those three preceding pages?

A. That is correct, yes.

Commissioner Bricker: This is on the same volume as [fol. 631] actually——

The Witness: Exactly, yes, the actual volume of gas distributed in the city of Lima.

By Mr. Light:

Q. You have no way of arriving at what the volume would be with the reduced price?

A. No, sir, I have not.

Q. Will you explain the significance of the figures on page 26?

A. On page 26 and also on pages 27, 28, 29, 30 and 31 appear the operating expense of production of mixed gas with the purchase price of natural gas at 35 cents per thousand cubic feet.

Q. Going back to page 1, what relationship do the figures on 26, 27 and 28 have to the figures on page 1?

A. The figures on page 1 are in no way affected by the figures on page 26, but the figures on pages 27, 28, 29, 30 and 31 are the derivation of an amount shown on page 1 as the cost of mixed gas.

Q. That would be the first item under operating expense on page 1?

A. Yes. Pardon me, may I direct your attention to the amounts at the bottom of page 31 in cents per m. c. f. or cents per thousand, it is 29.664 cents, and that appears on page 1 opposite cost of gas sold in cents per thousand, in the amount 29.7.

Q. And what do you have on pages 32, 33, 34, 35, 36 and 37?

A. A similar statement as the one preceding excepting that natural gas is here included at 55 cents per thousand.

Q. And the results of the calculations found on pages 33, 34, 35, 36 and 37 are found where?

A. They are found in all statements based upon 55 cents, natural gas.

[fol. 632] Q. That would be true of page 19?

A. That would be true of page 19 I believe—yes, it is true of page 19.

Q. That is the figure under the item operating expense of cost of gas sold on pages 14 to 19 inclusive corresponds to the figures—are the figures from pages 32 to 37 inclusive, 32 and 37 explaining how you arrived at the figures in the other?

A. Yes, that is correct.

Q. Go to pages 38, 39, 40, 41, 42 and 43; what do you have there?

A. Those pages reveal the cost of producing water gas as revealed by the books of the company.

Q. I will ask you whether or not the calculations found on pages 38 and following show the figure that is used all the way through in the preceding pages on the expense of water gas.

A. Yes. The figures are the figures that are used in making up the statement of the cost of mixed gas in each one of the various statements.

Q. Those figures on 38 and following pages are from the books of the company?

A. Yes, they are.

Q. Taking pages 44 and following pages, to and including 49, are those figures from the books of the company?

A. They are primarily, with this explanation, that the company's distribution expense includes some transmission expense, as is shown on pages 50 to 55 of this exhibit. The various items comprised in distribution expense here are distribution expense taken from the company's books after eliminating transmission expense that the company has charged in as distribution expense.

Q. You find items on the books of the company of transmission maintenance?

A. Transmission expense. If you will refer to pages [fol. 633] 50 to 55 you will find the detail of that. It is divided into operations and maintenance.

Q. Other than that, are the figures found at pages 44 to 49 inclusive as you find them on the books of the company?

A. They are.

Q. And the figures on 44 to 49 comprise the itemization of your distribution expense found on page 1?

A. That is correct, yes, page 1 and other similar statements.

Q. That is where we find the item Distribution Expense, it is itemized on pages 44 to 49?

A. Yes, 44 to 49 is the source of those items.

Q. What you have at page 50 and following?

A. On pages 50, 51, 52, 53, 54 and 55, will be found the segregation of transmission expense from distribution expense. The amounts there revealed are taken directly from the company's records.

Q. That is a break-down of these items found in these condensed statements on page 1?

A. Yes.

Q. Page 56 and following up to 60 are the two items designated as Commercial Expense and New Business Expense?

A. Yes, and also page 61.

Q. And in your calculations on pages 1 and 19 you have used the figures of the company on this item of new business?

A. Yes, as revealed on the several pages that you just referred to.

Q. Do I understand that in your opinion that is a proper charge?

A. No, sir, I don't know that it is a proper charge, that is in amount. I have no criticism as to the entries made, but as to whether or not that is a proper amount I would [fol. 634] not say that it is.

Q. Can you tell the Commission whether or not that expense is justified by increase in business, assuming that that department is entirely responsible for all increase that they may have?

A. I do not think it is.

Chairman Hopple: Your criticism goes to the fact that the amount spent is in excess of the results obtained?

The Witness: It so appears, yes, from the testimony of the company's witness.

By Mr. Light:

Q. On page 62 we have an itemization of the General and Miscellaneous Expense. Those are figures from the Company's books?

A. They are, excepting as to this detail; there are a number items shown on page 62 which comprise detailed charges on the company's books which detail is not revealed. For example, the item of Donations shown on page 62 in the company's accounting comprise sustaining donations to Chambers of Commerce, local charitable contributions, civic and charitable special funds and other donations. That is all shown here under the one item. Likewise dues and memberships, injuries and damages, welfare expense, comprise items not detailed that are shown in the company's accounting in detail. I will read the detailed items if you wish them in the record.

Q. In your calculations at pages 1 and 19 and elsewhere did you include as a part of your general and miscellaneous expense all of the items appearing in the column "Lima District"?

A. No, sir.

Q. What ones did you not include?

A. I exclude regulatory Commission expense and Midland Company services.

[fol. 635] Q. What is that regulatory Commission expense?

A. That is the expense of conducting the rate hearing before this Commission.

Q. And that item, beginning with page 62 and following, amounts to some $33,000?

A. For the three years and nine months period it amounts to only $1,997.26. I am referring to regulatory Commission expense.

Q. Is that all that has been paid?

A. No, sir, I do not think so, but that is all that has been charged during that period.

Q. Are you familiar with the figures in company's Exhibit 104?

A. Yes.

Q. You say the books do not show the payment of that in that period of time?

A. That is as I recall it, yes. I think some of those might have been prior.

Q. You are disallowing that item entirely?

A. Yes.

Q. Why?

A. For the reason that such charges have no proper place in expense accounts upon which the fairness of rates to Lima consumers are to be tested.

Q. You also eliminated from your calculation the payments made to the parent or holding company, the Midland Company?

A. I did, and for the same reason.

Q. You have included in full the items of donations, dues and memberships?

A. I have, yes.

Q. What is that injuries and damages?

A. Injuries and damages on the company's accounting comprise medical expense, injuries to employees, other injuries and property damage, disability, payroll and safety department expense.

Q. Have you included back here in your items of expense [fol. 636] the cost of workmen's compensation insurance?

A. Yes; that the company charges under what I show here as welfare expense.

Q. What is welfare expense?

A. That comprises employees' insurance and miscellaneous welfare expense and pensions.

Q. There is no record or any actual figures as to whether or not the ordinance of Lima—the rates provided by that ordinance would make available an appropriate return on the investment?

A. No, sir, not that I know of.

Q. All we had is the experience of the company on a schedule of rates which they have selected which are before the Commission now?

A. Yes.

Q. Are you familiar with the fact that in towns throughout the state of Ohio similar in size and larger and smaller, that the rates vary from 45, 50 cents up to 75 and 80 cents?

A. Yes, I am familiar with that fact.

Q. Is it apparent from those figures here that the present rate charged by the gas company brings in perhaps a 7 or 8 per cent return on the investment?

A. As I remember the figure presented by the company

Q. That is it approximately?

A. I think so, yes.

Q. Tell the Commission what there is about Lima and the Lima plant that makes it different from other towns in their rate experience.

A. In my opinion there is only one distinguishing difference and that is they do not sell enough gas. In my opinion the reason they do not sell the volume of gas is because the price has been put up to the point of a diminishing return. If the price of gas is increased the volume will decrease further.

Q. And if the price is decreased?

A. The volume should increase.

[fol. 637] Mr. Light: At this time we offer City's Exhibit A-3.

Mr. Hedel: I would prefer the Commission would withhold the ruling on that in abeyance until after cross-examination.

Chairman Hopple: Very well.

Commissioner Geiger: Do you have personal knowledge of any other city in Ohio than Lima and Kenton which furnish to their consumers a mixed gas, partly artificial and partly natural; is that customary in Ohio?

The Witness: It is not at all customary. I suspect there may be one other plant supplying mixed gas but I am not positive of that, and that may be Portsmouth. There is some mixed gas distributed by some of the larger utilities but it is a very, very small number of consumers comparatively.

Commissioner Geiger: Could you give us any expression of opinion whether or not the distribution of mixed gas is more expensive, considering its likely b. t. u. content, than would be the distribution of the natural gas, even though you might have to pay as high as 55 cents for your natural gas at the gateway?

The Witness: The cost of distributing manufactured gas, and answering your question directly as to distribution——

Commissioner Geiger: I mean manufacture and distributing?

The Witness: The manufacturing cost and the distribution cost of manufactured gas, water gas, in small volumes, would not be very much different from the cost of natural gas. The ultimate cost is directly affected by the size of the undertaking. Four your information I cast up accounts on this Lima matter both ways. What would be the cost of

distributing natural gas in Lima, eliminating the manufactured gas equipment and all fixed capital charge relative thereto, together with operating expense in manufacture, [fol. 638] and on a 35 cent wholesale rate, it does not make any appreciable difference in the ultimate rate chargeable, basing such calculations upon the present volume of gas distributed. Now if the volume would go up, that relationship would very likely change.

Commissioner Geiger: Very well.

Mr. Hedel: We wish to ask at this time that we be given additional time to examine this exhibit before cross examination. We received this document, I understand, yesterday morning. Mr. Pringle had less than half a day to look at it. None of the figures are checked in any way whatsoever and I think an attempt even to start cross examination on the document at this time without careful analysis of it would just result in encumbering the record with many matters that undoubtedly can be wholly avoided after an analysis of the exhibit.

Chairman Hopple: I think you are correct.

Mr. Hedel: There is one point that I would like to ask about at this time; that is I presume that the witness is prepared to furnish us the detail on which he built up this figure which he shows in his exhibit for depreciation. If he is willing to give us that data we will be glad to consider that in connection with studying the exhibit. If not we would consume some time by inquiring in detail as to each of the items involved in building up this depreciation figure, which in this exhibit appears merely as a single item.

Chairman Hopple: What was your last suggestion?

Mr. Hedel: We would like to be furnished with the detailed data on which the depreciation figure which appears in this exhibit is based.

[fol. 639] Chairman Hopple: Can you supply the data?

The Witness: I can.

Chairman Hopple: All right, will you do that?

The Witnes: Yes.

Chairman Hopple: Furnish it.

Mr. Hedel: Will we be able to obtain that before we leave?

The Witness: I will supply that when I offer the corrected pages for the exhibit.

Chairman Hopple: And that will be approximately when?

The Witness: Tomorrow is Saturday and Monday is the 4th of July. It will be some time next week.

Chairman Hopple: Some time during the week?

The Witness: Yes.

Chairman Hopple: This matter will be adjourned to Tuesday, July 19th, 1932, at 10 o'clock A. M.

And thereupon the further hearing of this matter was adjourned to Tuesday, July 19th, 1932, at 10 o'clock A. M.

[fol. 640] Tuesday Morning Session

July 19, 1932.

And thereupon the further hearing of this cause was resumed, pursuant to adjournment, before Honorables E. J. Hopple, Chairman, and Frank W. Geiger, Public Utilities Commissioners.

Appearances:

(Same parties present by their respective counsel as at previous hearing.)

Chairman Hopple: The matter for hearing this morning is the appeal of the West Ohio Gas Company, case Number 5137. Let us have the appearances if there have been any changes.

Mr. Hebel: There have been no changes in the appearances.

Chairman Hopple: Where were we when we adjourned the last time?

Mr. Hebel: The city just finished its examination on its Exhibit A-3 and I believe we are ready for cross-examination on that.

Chairman Hopple: Do you want to call Mr. Allensworth?

Mr. Hebel: He was on the stand for cross-examination.

Chairman Hoppel: And you want to continue that?

Mr. Hebel: Yes.

Chairman Hopple: You sent your exhibits over?

Mr. Allensworth: Yes.

Chairman Hopple: The corrected exhibits?

[fol. 641] Mr. Allensworth: Yes, I turned them over to Mr. Sprankle.

Chairman Hopple: You may proceed.

Mr. Hebel: May it please the Commission, I desire at this time to move, without prejudice to or objection to the entire exhibit designated City's Exhibit A-3, that the Commission rule at this time that Pages 1 to 13, both inclusive, and Pages 26 to 31, both inclusive, and the title page preceding Page 26 be refused in evidence for the reason that the data set out on all those pages is based upon an assumption of natural gas purchased at 35 cents, whereas the evidence in this case clearly shows first, that there is no relationship whatsoever between the wholesaling gas company and the West Ohio Gas Company, and secondly, that the West Ohio Gas Company purchases this natural gas under a contract which is now in force and effect by which the West Ohio Gas Company is required to pay and does pay the sum of 55 cents for such natural gas purchased and used in rendering service within the City of Lima.

Chairman Hopple: Has the exhibit you just referred to been offered in evidence?

Mr. Hebel: Yes, it was offered and the Commission deferred its ruling on the entire exhibit until after the cross-examination was completed, but at this time, in order not to make it necessary to examine on that phase of the objection which we contend is entirely irrelevant and immaterial under court decisions, and with which you are familiar, I am moving that the Commission reject at this time those pages which I have mentioned and which deal solely with set-
[fol. 642] ups based upon a 35 cent price for gas.

Chairman Hopple: Do you wish to be heard on the matter, Mr. Light?

Mr. Light: We feel at this time that this matter should go into the Commission. We want to present to the Commission the argument that the Ohio Fuel Gas Company is a public utility and should, under the statutes of Ohio, file its schedule with this Commission. It is true there are court decisions, I think, of Judge Killits of Toledo, on this particular contract, but the Ohio Fuel Gas Company is qualified before this Commission as a public utility. We think it should file its schedule of rates, not only retail, but wholesale, because they are a public utility and this is one of the sales they make. There is no schedule of their rates on file with this Commission and this contract is in effect so far as this Commission is concerned, and at this time the matter ought to go through and present a final disposition.

Mr. Hebel: May I call your attention to the fact that not only has this specific contract been passed upon by the Federal Court, but by this Commission in a case reported in P. U. R. 31-B, Page 1, which held and was bound by the terms of such contract and had to accept the purchase price, the price set forth in a contract of this nature. The question is entirely precluded both by the decisions of the courts and the decision of this Commission, that in wholesaling this gas, the Ohio Fuel Company is not subject to the jurisdiction of this Commission, and there is an actual contract in effect and it is now in force and effect and will continue for so many years in the future, and the price the West Ohio Gas Company must pay for this gas is fixed in there by that [fol. 643] contract. The Commission has a question up. It was before the Federal Court and it was decided that this contract price was the cost which must be taken as the cost to retailing company, and then the Commission passed upon the matter again later in this Western Ohio Public Service Company case, and we contend the matter is and has been precluded and decided, and there can't be any question to my view but that the 55 cent price must be taken as the gateway price.

Mr. Light: We feel with the Federal decision—the fact that the vendor of the gas in that case was a public utility, that was not in that case at all.

Mr. Hebel: It involved this very contract.

Mr. Light: It involved this contract, but not the background, who the seller was and the matter of the presentation to the court or the situation that they were a public utility engaged in the distribution of natural gas in Ohio was not in the case or offered in the case.

Chairman Hopple: Without taking the time to entertain arguments for or against the motion, it may be of such importance that my colleagues should join in passing upon the motion just made. At least, I do not feel that I alone should attempt to pass on this motion at this time. The disposition of the motion to exclude will be deferred at least until a later time during the progress of the case and until such time as I may have the opportunity of having my colleagues confer with me on the motion.

You may proceed with your cross-examination, Mr. Hebel.

[fol. 644] And also—

H. R. ALLENSWORTH, recalled for purposes of cross-examination, being first duly sworn, testified as follows:

Cross-examined by Mr. Hebel:

Q. Mr. Allensworth, I understand that you substituted some pages in City's Exhibit A-3 as submitted at the prior hearing?

A. I did.

Q. Can you give me the number of pages that were substituted?

A. They were pages 1 to 25 inclusive.

Q. And that was the only change you made in the exhibit since the last hearing?

A. No, sir, I think I made two other minor corrections.

Q. What were they?

A. On page 49, there was a typographical error in the bottom line on that page, and the percentage on the bottom line of this page reading 98.2 should have been 97.2.

Q. And where were the other changes?

A. The other one was on page 53 in the column to the right; due to a typographical error a total amount was omitted, the amount being $22,440.34.

Q. Were there any others?

A. That amount should have appeared in the column to the extreme right on page 53 and opposite the title "Total" under the general title "Operations Expense". In other words, it is the eighth amount in that column of figures.

Q. Were there any other changes in the exhibit?

A. No, sir.

[fol. 645] Chairman Hopple: And those corrections were made, as you have just testified, in the copies left with the Commission?

The Witness: They do, yes.

By Mr. Hebel:

Q. Turning to page 1 of your exhibit, is there any figure or item on that page that is an exact figure taken from the books of the company, or was it necessary to make some computation or allocation in order to develop each and every figure on that page?

A. All expense item figures are allocated to the City of Lima.

Q. Are there any items on the page that do not involve allocation?

A. Yes.

Q. Which ones?

A. The amount of gas sold.

Q. That is taken from the books of the company?

A. That is the company's records of the amount of gas actually sold during the average 12 months' period within the City of Lima.

Q. Is there any other item which is not an allocation or estimate?

A. The amount shown opposite "Cost of Gas Sold" comprises the cost of manufactured gas revealed by the books of the company in the amount accounted for as sold within the City of Lima.

Q. My question is whether or not there is any other item except the m. c. f. of gas sold that appears on page 1 of this Exhibit A-3, which does not involve either an estimate on your part or an allocation made from figures that appear on the company's books.

A. Yes, I understand the question and I am addressing myself to that question.

Q. Will you please answer whether there is or is not?

[fol. 646] A. I have answered that there are figures on this page.

Q. You have answered that the m. c. f. of gas sold was taken from the books of the company, and I am now asking whether there is any other item which is taken from the books of the company without either an allocation or an estimate on your part?

A. Yes. I have answered that.

Q. Will you find out which item or items those are?

A. I have stated that the amount shown opposite the title "Cost of Gas Sold" comprises the cost of manufactured gas at the company's book cost of manufactured gas in the amount thereof as accounted for by the company, as distributed in the City of Lima.

Q. I am asking you about the figures that appear on this page?

A. That is what I am addressing myself to.

Q. You show revenue of $386,137.90. Does any such item appear on the books of the West Ohio Gas Company?

A. No, sir.

Q. You show cost of gas sold $113,064.44. Does any such item appear on the books of the West Ohio Gas Company?

A. Not in that total amount, no, sir.

Q. You show distribution expense of $39,810.72. Does any such figure appear on the books of the West Ohio Gas Company?

A. That amount is taken from the books of the company and allocated to operations within the City of Lima.

Q. Did you find on the books of the West Ohio Gas Company, without you making some kind of an allocation, any figure of distribution expense of $39,810.72?

A. As revealed on pages 44, 45, 46, 47, 48 and 49 of this exhibit, the amounts shown all the way through this exhibit [fol. 647] for distribution expense are taken directly from the books or accounts of the company and allocated to the city of Lima on the basis as shown for each allocation.

Q. And that allocation was made by you?

A. Yes.

Q. So that none of the figures which you show as expense items are taken directly from the books of the West Ohio Gas Company without making an allocation?

A. Those are all taken directly from the books of the Gas Company and the allocations are then made after taking them from the books of the company.

Q. But none of the figures which you show in this exhibit appear on the books of the company, but are based upon figures from the books of the company after the allocation is made by you?

A. No, sir, that is not true. All of the figures appearing on this exhibit that are revealed as expense items are taken directly from the books of the company. The amount you have directed my attention to in your former question appearing on page 1 is that expense account after allocation.

Q. Turn to page 2; are there any expense items on that page that are not determined after you have made an allocation?

A. The same answers as applied to your former questions will apply to page 2. That is to say——

Commissioner Geiger: The same answer; don't repeat it.

By Mr. Hebel:

Q. And that is true of every page in this exhibit showing operating expenses?

A. No, sir, it is not.

Q. Will you tell me on what page that is not true?

A. It is not true of any and all of the pages in which [fol. 648] the amounts as revealed by the books of the company are shown in detail. Those are the pages in which are set forth all of the operating expenses.

Q. Which pages are those?

A. Beginning with page 26 and on through up to page 68.

Q. But it is true of everything up through page 25?

A. Just what are you referring to, is that true?

Q. The statement which you made as to those amounts shown not being directly from the books of the company, but based upon allocation which you had made.

A. I have not made that statement. The statement I made is that all of these expense accounts are taken directly from the books of the company and allocated to Lima, but that answer applies to pages 1 to 25 inclusive.

Commissioner Geiger: Can't we get at it this way, isn't this the truth, that pages 26 to 68 you have taken figures that are shown by the books of the company?

The Witness: Yes.

Commissioner Geiger: And from page- 1 to 25 you have allocated?

The Witness: Yes.

Commissioner Geiger: To the Lima plant?

The Witness: Yes.

Commissioner Geiger: According to what the amount of gas burned—in what way?

The Witness: Some of the accounts on the basis of gas distributed, some on the number of consumers and some on the weighted average; that is general expense on the [fol. 649] weighted average.

Commissioner Geiger: Your pages 1 to 25 show how that allocation is made?

The Witness: No, sir, pages 26 to 68 show the detail of the allocation.

By Mr. Hebel:

Q. Pages 26 to 68 then merely cover the method of allocation you followed?

A. No, sir, they do not.

Commissioner Geiger: He says figures from the books.

The Witness: They reveal the accounts appearing on the books of the company, and in addition thereto show the basis of allocation.

By Mr. Hebel:

Q. Made by you?

A. Yes, made by myself.

Q. You do not claim that is true of the cost of natural gas on pages 26, 27, 28, 29, 30 and 31?

A. No, sir.

Q. What other items are there of which that statement is not applicable?

A. I do not know—I do not think of any.

Q. Mr. Allensworth, during your direct examination, you were asked this question and made this answer, appearing on page 1170 of the record: "And the last figure on the page"—and that is page 1—"is the amount which would be left available for return on investments". Then you made this answer: "It is, yes, in the amount of $94,400.98, which is equal to 5 per cent on the Commission's final finding as to sound value of the West Ohio Gas Company's property used and useful in distributing gas to Lima consumers, the amount thereof, or the amount of the Commission's finding as to sound value, being $1,888,019.61." I want to direct your attention to the final order entered by the Commission in this case as to the value of the property [fol. 650] used and useful in serving the city of Lima with gas service by the West Ohio Gas Company and ask you to point out where in that order the Commission makes a finding of value in the amount which you stated in answer to that question to be the Commission's finding?

A. That is revealed on page 68 and page 69 of what has been marked City's Exhibit A-3.

Q. Will you please point out in this final order of the Commission where the Commission makes a finding of any such amount as you have stated?

A. I did not state the Commission made a finding of that amount. I said the Commission made a finding as to sound value of the property of the West Ohio Gas Company and the amount thereof used and useful in distributing gas to the city of Lima is $1,888,019.61.

Q. Will you point out in what order of the Commission they found a sound value of the amount which you just mentioned?

A. I did not say the Commission made an order of that amount, no place in my testimony.

Q. Point out where the Commission found a sound value for the property used and useful in rendering gas service to the City of Lima in the amount you mentioned.

A. I did not say that.

Commissioner Geiger: Where did you get the figure?

The Witness: The Commission's sound value appearing in its order is for the Lima district comprising territory outside of the city of Lima. In my exhibit I have allocated the Commission's sound value to use in the city of Lima. The basis of the allocation appears upon the two pages in this exhibit, 68 and 69.

By Mr. Hebel:

Q. Point out where in its findings the Commission found [fol. 651] the value determined by them of $1,901,696.26 was for property use- and useful any place except within the city of Lima?

A. That decision and order of the Commission certainly is the sound value as found by the Commission on the amounts of property comprised in the inventory upon which the Commission's value is found, and that inventory certainly is for the Lima district. It is not for Lima only.

Q. Point out where in this order the Commission—what the Commission found in this order as to the property covered by this finding. Is it not true that this order finds that the value fixed by the Commission is for the property used and useful in serving the city of Lima?

A. No, sir, I do not know that.

Q. Read the first paragraph of the order.

A. You can read it. Make it a part of the record.

Mr. Hebel: I think I will accept that suggestion. I would like to have the record show the first provision of the——

Mr. Light: Is not the order of the Commission already a part of the record?

Chairman Hopple: Yes, but I will permit counsel to read into the record that portion of the order on account of the attitude of the witness.

Mr. Hebel: On January 27th, 1932, this Commission entered its final order as to the valuation in this Cause No. 5137. The following is the first paragraph of the order, the ordering part of the order:

"Ordered, that the Commission do find, ascertain and determine the final value, as of March 31st, 1928, of the several kinds and classes of property of the West Ohio Gas [fol. 652] Company, used and useful, for the convenience of the public, in the furnishing of natural gas service to its consumers, and to the public, in the city of Lima, Ohio, and of said property as a whole, to be set forth in the following summary (the grand totals of which are, reproduction cost new, $2,392,948.23, depreciation, $491,287.97, and present value, $1,901,696.26), namely: * * *" then the Commission sets forth in tabulation form the various classes of property.

By Mr. Hebel:

Q. Mr. Allensworth, you testified in reference to the subject of taxes. Will you turn to page 18 of Exhibit A-3. I believe you said that the excise tax and the Federal income tax were different than appeared on the books of the company for the reason that they were figured on the estimated net return which you show, is that correct?

A. I think so.

Q. But that the other taxes were the same as shown on the books of the company?

A. No, sir, I made the statement the real and personal property tax was taken from the books of the company and allocated to the city of Lima.

Q. Do you claim then that for 1931 the books of the company show real and personal property tax of $17,774.68 for the city of Lima?

A. Allocable to the city of Lima, yes.

Q. The company in its exhibit No. 104 shows real and personal property taxes for the Lima district, which included Cridersville and the little rural territory immediately adjacent to Lima, and included the property value which, according to you, amounted to around $3000 which you have deducted on pages 68 and 69 of your exhibit. Taxes for those items as shown on the books of the company are $20,- [fol. 653] 460.00. Will you explain what taxes you deducted

in order to get only $17,774.68 for the city of Lima for that year?

A. I did not deduct any taxes.

Q. Then what did Mr. Cahill deduct?

A. Mr. Cahill did not deduct any taxes.

Commissioner Geiger: I ask the direct question. Why do you use the figure seventeen thousand plus instead of twenty thousand plus?

The Witness: That is the amount shown on the books of the company as taxes paid during 1931 allocated to the city of Lima on the basis of the book account of fixed capital and some other factors. I would like to refresh my memory on that, if I may. Yes, that is correct. $17,774.68 is an allocation of the amount properly chargeable to the Lima district of $20,287.92, the allocation factor being as to that item, 87.6 per cent.

Q. Do you have your taxes split up by the places in which they were paid?

A. Yes.

Q. What proportion of the taxes paid in Wyandotte County did you charge to the city of Lima?

A. 84.6 per cent.

Q. What was it in dollars?

A. $1,713.76——

Q. Wyandotte County?

A. Pardon me, $118.02

Q. What was the percentage figure?

A. 84.6 per cent.

Q. That property in Wyandotte County is the transmission line?

A. It is.

Q. Is that 84.6 per cent. based upon the proportion of the gas that comes through that line that was used by the city of Lima in 1931?

A. Yes.

Q. And you found that to be 84.6 per cent. of that gas in [fol. 654] the year 1931?

A. Yes.

Q. What did you find to be the total taxes paid in Wyandotte County by the company in 1931?

A. I do not have that figure before me, I do not remember.

Q. It is a fact that there were $266.71 taxes paid in that county in 1931?

A. I do not know whether they did or not at this moment.

Q. Have you got any figure that would show that?

A. I have not here in the hearing room.

Q. Then you do not know whether the figure of $118.02 is 84.6 per cent. of the total taxes paid in Wyandotte County or not?

A. I know it is not.

Q. What per cent. of the taxes paid in Wyandotte County did you charge to Lima?

A. I cannot answer that. What I said was that 84.6 per cent. of the total amount of taxes paid in Wyandotte County chargeable to the Lima district is allocated to the city of Lima.

Q. Now, the taxes paid in Hardin County in 1931, what amount did you allocate to the city of Lima?

A. $807.98.

Q. Was that the allocation made by the company on its books for the city of Lima?

A. I do not know that the company ever made any allocation upon its books to the city of Lima.

Q. What proportion of the taxes paid in Hardin County did the West Ohio Gas Company on its books charge to the Lima district?

A. The Lima district?

Q. Yes.

A. $954.64.

Q. And you charged 84.6 per cent. of that to the city of Lima?

A. Yes, in round figures. The actual factor for your information was 84.63709 per cent.

[fol. 655] Q. Of the taxes paid in Allen County—and that is the county in which Lima is located, is it not?

A. Yes.

Q. There was an item of taxes paid within the Lima corporation of $16,872.98; do you have that figure?

A. No, sir. You are referring to the transmission line now?

Q. Pardon me?

A. You are referring to the transmission line in all these questions?

Q. No, sir, I am referring to all taxes paid by the West Ohio Gas Company.

A. I did not so understand you.

Q. You have included all taxes in this $17,000 item that were paid by the company that you think are allocable to the city of Lima?

A. Certainly, yes.

Q. What were the taxes paid by the company within the Lima corporation limits and how much of those did you allocate to Lima?

A. I do not understand the question?

Mr. Light: Is there a separate figure for within the Lima corporation limits?

Mr. Hebel: Yes.

(Question read.)

The Witness: You are referring, I presume to real and personal property and total amounts paid upon all classes of property?

By Mr. Hebel:

Q. Yes.

A. $16,971.44 for the Lima district, of which amount I allocate $16,060.92 to the city of Lima.

Q. Now, there was an item of taxes paid in Auglaize Township; how much of that did you allocate to the city of Lima?

A. The amount for the Lima district was $402.10, of which amount I allocate $340.32 to the city of Lima.

[fol. 656] Q. On what basis do you make that allocation?

A. 84.6 per cent. in round figures.

Q. And in Perry Township?

A. Lima district amount, $528.66; allocated to Lima, $447.44.

Q. And that is the same percentage?

A. Yes.

Mr. Light: Are those two items on the transmission line?

The Witness: They are, yes.

By Mr. Hebel:

Q. How did you arrive at this 84.6 per cent. so that you applied it to all the property?

A. I didn't apply it to all the property.

Q. Which items of property didn't you apply it to?

A. I did not apply it to Lima property.

Q. You applied it to all items of taxes then, except the property within the corporate limits of Lima?

A. I applied that factor—no, I did not; I applied that factor to all items of property comprised in the transmission main; I should add for clarity the transmission main east of Lima.

Q. What did you say you should add?

A. East of Lima.

Q. And did you use the same percentage factor for each of the other years which you analyzed?

A. No, sir, I would have to look that up, but the factor changes.

Q. Do you have the figures there for the other years?

A. Yes, I can give you that.

Q. All right, what did you use for 1930?

A. 91.72588 per cent.

Q. And 1929?

A. 94.89168 per cent.

Q. Then you do not have the calendar year 1928?

A. No, sir, I have the last nine months of 1928.

[fol. 657] Q. What percentage did you use there?

A. 94.51879.

Q. And for the 12 months ending March 31st, 1928?

A. 95.85474.

Q. On what basis did you determine that percentage, gas sold or gas purchased, gas transmitted or what?

A. Gas purchased for delivery to the various locations.

Q. Take the line west of Lima, is any of that involved in your tax figures?

A. I assigned no tax paid on the property north and west of Lima to Lima city.

Q. In determining that ratio, did you take into account any allowance for leakage?

A. Certainly, yes, that is just exactly what that figure does. It is based on the amount of gas purchased.

Q. And where are the meters located that the measure of the gas is purchased——

A. This has been quite some time since I have been over this inventory. I cannot answer that directly, but the

purchase records of the company are the basis of these figures.

Q. In determining this percentage, did you give any consideration to the sale in the different communities served?

A. Yes, sales were looked at but the company's accounts of the natural gas purchased for the various locations was the basis of the allocation.

Q. Solely the purchase of gas, without any consideration to the amount sold?

A. That is correct.

Q. Mr. Allensworth, you testified at the former hearing as to an opinion as to what was an adequate rate of return for this company to be allowed. I presume as the basis for those opinions you keep yourself informed as to the court [fol. 658] decisions as to adequate returns for public utilities, do you not?

A. Yes.

Q. And you have those decisions in mind when you gave your opinion in this case, did you?

A. I did.

Q. You understand the difference between the problem which a Federal equity court has in confiscation case, as to rate of return, and the problem which the Commission has in fixing reasonable rates?

A. No, sir, I am not a lawyer; neither am I a judge. I never sat on any such court.

Q. In expressing an opinion as to an adequate rate of return, were you fixing rate of return at such a point as to be non-confiscatory or were you considering the rate of return which ought, in fairness, to be allowed by Commissions to a company such as the West Ohio Gas Company?

A. I was fixing rate of return in view of all of the circumstances in this particular case, which is an inquiry into the fair rates to be charged for gas distributed within the corporate limits of the city of Lima, and I stated in my testimony a number of factors entering into my judgment on that subject. I also had in mind very definitely the decisions of the Supreme Court of the United States in which, if I am correctly informed, they have repeatedly held that the fair rate of return must be determined by a full consideration of all of the circumstances in each particular case.

Q. Was it your opinion then that the rate of return which you mentioned, of 5 per cent., was non-confiscatory within

the definition of that word as used by the Federal courts?

A. As I understand that term as a layman, most assuredly so, yes.

[fol. 659] Q. What are the factors you understand must be taken into account in determining whether a rate of return allowed is confiscatory or not?

A. As to whether a rate is confiscatory?

Q. Or not?

Chairman Hopple: Is that essentially a necessary part of this cross examination as to what the elements of a confiscatory rate might be?

Mr. Hebel: When a witness comes in and assumes to be qualified to present an expert opinion as to a fair rate of return, we think we are entitled to interrogate him as to what basis he places that opinion on.

Mr. Light: Put it rather that the witness has said that 5 per cent. is sufficient, and there are the figures, and it goes for what it is worth.

Mr. Hebel: When a man assumes to express an opinion as an expert witness, you have the right to test to the fullest extent his knowledge on the subject.

Chairman Hopple: Even so, the question as to whether the rate of return as fixed or as testified to is fair would be a matter entirely for judgment on the part of the Commission.

Mr. Hebel: Yes, but the only thing we are trying to find out is whether this witness knows what he is talking about, whether he has any foundation to express an opinion.

Commissioner Geiger: What difference does it make whether he knows?

Mr. Hebel: It makes a good deal of difference as to whether he knows or not.

Chairman Hopple: Sufficient evidence is before the Commission as to the capacity and ability of this witness to [fol. 660] qualify as an expert and that would run not only to one particular subject but to all subjects or items properly included in a gas question, and when the witness says in his opinion a rate of return he has found to be a reasonable rate, based upon the evidence and the facts in the case as examined by him, I think you have pretty near gone as far as you should go.

Mr. Hebel: Of course, I do not have any means of knowing what the Commission's view is as to this man's ability

to testify on this subject. I have my own, and thought he should not have been permitted to answer those questions.

By Mr. Hebel:

Q. Did you ever borrow any money for a public utility?

A. That is an impossible question. I am not a public utility. I will answer it this way——

Q. May I ask you if you ever borrowed any money for a public utility?

A. I do not think any individual borrows money for a public utility. The Board of Directors may; the executive management may, but I do not know of any individual that borrows money for a large public utility. I will answer this way, that I have participated in making loans of very large amounts to a very large utility, yes.

Q. When was that?

A. If I remember rightly, the one I am referring to was 1920 or 1921. I do not remember exactly.

Q. How much was the amount of this money that was borrowed?

A. Four and one-half million dollars.

Q. How large a public utility was it?

A. Total assets in the amount of about $50,000,000, as near as I can remember.

Q. Over how wide a territory did it operate?

A. The southern part of the state of Minnesota.

Q. What type of utility was it?

A. Telephone.

[fol. 661] Q. Was it bonds or stock?

A. Bonds.

Q. What rate?

A. Coupon rate, 5½ per cent., discount of one-half of one per cent.

Q. What was the selling cost in connection with the marketing of the bonds?

A. Those were on the market at a slight premium over par. I bought a block myself at par.

Q. Did you ever market any stock for any public utility?

A. I did not.

Q. Did you ever market any bonds or stock for any gas utility?

A. No, sir, I have not qualified as a bond salesman or stock salesman.

Q. Have you ever participated in the marketing of any bonds or stock for any utility since this issue which you mentioned?

A. Not that I remember of offhand.

Q. Did you ever participate in the marketing of any bonds or stock for any utility prior to the one which you mentioned?

A. I think so.

Q. When was that?

A. I cannot tell you.

Q. How large was the issue?

A. Some of them very large.

Q. How many were there?

A. I cannot tell you that.

Q. What were the approximate dates of the issues?

A. Through the years——

Mr. Light: I object as immaterial.

Chairman Hopple: I think you have gone far enough.

By Mr. Hebel:

Q. Mr. Allensworth, you were asked at the last hearing this question, appearing on page 1171 of the transcript: "You are using the figure, Mr. Allensworth, of 5 per cent., which, as I understand you, in your opinion is an adequate return. Will you please explain why you used 5 per cent"? [fol. 662] And this is your answer in part, "In fixing the rate of return allowable on the Commission's final finding as to fair value of property used and useful in Lima gas operation, I am not unmindful, I do not believe the Commission would be unmindful of the fact that the date certain of its, the Commission's finding, is March 31st, 1928. During the years subsequent to this date certain and the years during which the ordinance rates in question would have been in effect, commodity prices have been rapidly declining, and today the decline still continues. The reproduction cost appraisal of this property at any date subsequent to the date certain of the Commission's finding as to fair value would produce amounts less than the reproduction cost as of that date." At the time you made that statement were you familiar with the level of prices at all times and periods subsequent to March 31st, 1928?

A. I think so in a general way.

Q. What is the fact as to whether at price levels existing in April 1928, it would have cost more or less to reproduce the West Ohio Gas Company's property than it would in March, 1928?

A. I cannot answer that.

Mr. Light: Between March and April, 1928?

Mr. Hebel: March and April, 1928.

Mr. Light: A 30 day period.

The Witness: I cannot answer that.

Commissioner Geiger: No human being could answer it.

Mr. Hebel: Then probably this statement should not have been made, "that at any date subsequent to the date certain of the Commission's finding as to fair value would produce amounts less than the reproduction cost as of that date".

[fol. 663] Commissioner Geiger: Make it short.

By Mr. Hebel:

Q. Was there a decline in the price of commodities used in constructing a gas manufacturing plant as those prices existed in December, 1928, and as they existed in March, 1928?

A. Yes, as I remember the facts at this time. I have not my data before me.

Q. How much was that decline?

A. I cannot answer.

Q. Isn't it a fact that the prices for the elements going into a manufacturing gas plant, were higher in December, 1928, than they were in March, 1928?

A. No, sir, it is not a fact.

Q. You are positive of that?

A. Yes.

Q. What about the materials and labor that is necessary in constructing a gas transmission and distribution system; were those higher or lower in December, 1928, than they were in March, 1928?

A. I may have misapprehended your former question. I thought you were talking about a gas property. May I ask what you were referring to in your former question?

Q. I am referring to the materials necessary to construct

the manufacturing plant of the West Ohio Gas Company at Lima, whether those materials were higher priced or lower priced in December, 1928, than they were in March, 1928?

A. They were lower.

Q. How much lower?

A. I do not remember.

Q. About how much.

A. I can't recall.

Q. You are certain they were lower?

A. I say they were lower.

Q. What about January, 1929?

Mr. Light: Something has been said about being econom- [fol. 664] ical in time, and if we go through like this with each month since March, 1928, and up until now—if there has been a general decline, we might discuss that, but if we take each day and each month we would be here for a month, and I object to this line of questioning.

Chairman Hopple: Objection overruled. I would suggest, however, that you abbreviate as much as it is consistent for you to do under all of the circumstances.

By Mr. Hebel:

Q. Have you ever prepared any graphs or index numbers as to material costs for those materials which are used in constructing a gas manufacturing plant and a gas transmission and distribution system for the period from March, 1928, through to the present time?

A. I have constructed no graphs, no, sir.

Q. Have you ever made up any compilation of index numbers on relative costs to show the trend of construction costs for such property during this period?

A. No, sir, I have examined other index numbers put out, and if I recognize the document you are looking at, it is full of errors.

Q. Did you ever see it before?

A. I suspect, I may have. I am not sure.

Q. Whose document is it?

A. I don't know.

Q. When was it prepared?

A. I won't answer that. I said I suspect.

Mr. Hebel: I move to strike out that remark; the witness apparently hasn't the least idea what it is.

Chairman Hopple: I think we will let it stand because certainly we won't attach much weight to it, if any.

By Mr. Hebel:

[fol. 665] Q. Do you know, Mr. Allensworth, how much lower, if any, the material prices and labor prices were for —or the material prices were for materials entering into the manufacturing, transmission and distribution system of the West Ohio Gas Company at the end of 1930 than they were on March 31st, 1928?

A. No, sir, I would not attempt to answer that without my data before me. I can answer you this way, if it will be helpful, that the decline in prices of materials and labor entering into the reproduction of the West Ohio Gas Company's property used and useful in the city of Lima from the date March 31st, 1928, to the first quarter of—the last quarter of 1931, the difference would be something like about 25 per cent.

Q. Is that based upon any study you have made?

A. That is based upon examination of price trends and the market quotations on prices of material.

Chairman Hopple: Mr. Allensworth, you say it applied to West Ohio Gas Company's property. Would you say that the same figure you have just given in your answer would apply to the reproduction of any gas property?

The Witness: I should say so generally. The detail would depend upon the relative weights of the different classes of property in the inventory. For example, we all know building costs have dropped off considerably, more so than some other classes of property. We know the price of pipe has declined somewhat.

Chairman Hopple: Are you attempting to give a general per cent. figure of rate of decline?

The Witness: As applicable to this property, yes.

Chairman Hopple: It is reasonable and fair to say that [fol. 666] the same or similar rate per cent. decline would be applicable to a like or larger property of a reproductive plant?

The Witness: A similar decline, yes. As to how much it would be like, of course, would depend upon the kind and type of property.

Chairman Hopple: Are you able to tell us what the rate per cent. decline we will say would have been January 1st, 1930?

The Witness: I should say that—you are talking from March 31st, 1928?

Chairman Hopple: Yes.

The Witness: If my memory serves me correctly, the decline would have been less to January 1st, 1930; that would be to the close of 1929.

Chairman Hopple: How much less is what I would like to know?

The Witness: If you will pardon me, I do not believe I would want to answer that without referring to the data and the charts and indexes I have examined.

Chairman Hopple: Would you be willing to venture an opinion that it was 15 or 20 per cent. less?

The Witness: I will make a guess, but advise you in advance I will be merely guessing, that it will be something between—I prefer not to guess unless you require me to.

By Mr. Hebel:

Q. Will you bring in the charts and the data on which you based your opinion when you testified the other day?

A. What?

Q. Will you bring in and let us see the charts and data upon which you based your opinion the other day as to the [fol. 667] decline in the construction costs for a considerable period?

A. I would be very glad to, but I do not think it will be possible. I do not think I have them in my possession now.

Q. Where did you obtain them?

A. From a great number of general sources; in other words, for example, of the Department of Commerce, the Trade Journals as to indexes and trends in commodity prices and studies I make coincident with my general line of work.

Q. What material prices did you get from the Department of Commerce?

A. I did not say I got any material prices from them.

Q. What information did you get from them?

A. I didn't say I used any information I got from the Department of Commerce. You asked me what kind of

data I had as to price trends, and I was directing my answer to your question.

Q. On which you base the opinion you stated the other day?

A. Yes. I might examine a lot of things in basing an opinion, but some one factor might or might not enter into the opinion. It might enter to a very little extent, or to a large extent.

Q. From what trade journals did you get your prices as to gas manufacturing plant apparatus?

A. The general statistics as to the manufacturing cost of comparable pieces of equipment.

Mr. Hebel: I move to strike out the answer and ask that the question be read to the witness.

(Question read.)

The Witness: No trade journals.

By Mr. Hebel:

Q. From what source did you obtain information as to the change in price for manufacturing gas manufacturing [fol. 668] plant apparatus?

A. The same answer as to your previous question. Will you read that answer please?

(Question read as follows: "The general statistics as to the manufacturing cost of comparable pieces of equipment"?)

Q. What changes in price occurred in the price of black steel, galvanized steel and wrought iron pipe less than 6 inches in diameter between March 31st, 1928 and December 31st, 1930?

A. I cannot answer that without having my data before me.

Q. Was the price of such pipe increased or decreased during that period?

A. The price decreased, and in that answer I am referring to net sale price, not particularly to general quotations.

Q. What about pipe 6 inch diameter and larger?

A. The same period?

Q. Same period?

A. There was considerable drop in the actual sales in large purchases at that time.

Q. Did you obtain your price quotations from any pipe manufacturers?

A. I have obtained a lot from pipe manufacturers, yes.

Q. For prices during that period from March 31st, 1928 to December 31st, 1930?

A. No, sir.

Q. Isn't it a fact, Mr. Allensworth, that as of December, 1930, the prices for material and labor entering into the Lima property of the West Ohio Gas Company were substantially the same as they were in March, 1928?

A. No, sir, it is not.

Q. There was less than 1/10 of one per cent. difference?

A. No, sir, that is not a fact. I happen to have in my office a record of large purchases by natural gas companies of large amounts of pipe, and the difference between those [fol. 669] purchase prices, the actual purchase and delivery and the published prices, are very, very great, the purchases being greatly lower.

Q. Were those purchased under special contracts?

A. They were purchased in the open market.

Q. Do you know whether those prices were available to purchasers in small quantities?

A. I have no reason to believe that they would not be.

Q. Do you know whether they were or not?

A. I know that some of the large companies purchased in small quantities, and they purchase in large quantities.

Q. Were these letters to which you referred for small quantities or large quantities?

A. I am not referring to any letters; I have not mentioned letters.

Q. Will you submit to us this data which you say you have in your office in reference to these pipe prices?

A. No, sir, I will not, for the reason that that is a violation of professional confidence, and that information comes to me through examinations I am making of the purchase records of some other gas companies.

Q. But it is usable for general statements?

A. Yes, and so long as I do not mention the company names.

Q. Where did you obtain the information as to prices of pipe and gas manufacturing plants that you used in connection with your appraisal in this case?

A. I did not obtain any price of pipe used in gas manufacturing plants and used in this case.

Q. The question said the price for pipe—the information as to material prices for pipe and for gas manufac- [fol. 670] turing plants that you used in formulating your appraisal of this property in this case; from what sources did you obtain that information?

A. You are going back quite some years and there has a lot of water gone over the dam since. My testimony is in the record as to the source of the price of pipe for each particular kind of pipe, and also there is my testimony as to the cost of the materials in the manufacturing plant. If I remember correctly, there was no difference of opinion between myself and the company's engineers as to the reproduction cost on some elements of manufacturing plant—I should say the major elements. The price of pipe, as I remember—and I respectfully ask to be corrected if I am wrong—the price of pipe as I testified, was the then current quotations from manufacturers.

Q. That you obtained from these manufacturers?

A. I don't think so.

Chairman Hopple: Let me ask you, Mr. Allensworth, I think in some respects it is aside from the issue for what we are here to discuss; in determining a reproduction value for any given property, we will say a gas property, in ascertaining material prices, we will say for transmission and distribution pipe, is it fair for the guidance of the Commission to say that the quotations that are furnished by trade journals and pipe manufacturers cannot be accepted because secret prices, price agreements, are arrived at as between the buyer and the seller?

The Witness: No, sir, I have never even intimated any such thing.

Chairman Hopple: Didn't you just say you had information in your office of a confidential nature which would be [fol. 671] a violation of the profession to which you belong if it were revealed?

The Witness: Yes, I said I had information of actual purchases of pipe.

Chairman Hopple: To repeat the question, if the Commission cannot depend for its guidance on quotations that

are furnished upon request by mail or upon quotations that are published in trade and business journals, upon what can it depend?

The Witness: I will answer it by saying most dependence can be placed in the trade practice as to price, but when you find every manufacturer in a given line departing from the published trade practice, then the Commission should, if that information comes before it, attach due cognizance to that information.

By Mr. Hebel:

Q. Do you have any information as to every manufacturer doing that?

A. Yes.

Q. Upon what facts do you base that statement?

A. The price information I have and through my investigations of some other gas companies.

Q. That is the information you say you won't produce?

A. Yes.

Q. And that is what might be considered distress selling?

A. I don't think so.

Q. Do you know any large amount of construction work that is going on for gas transmission and distribution lines at the present time?

A. No, sir. However, may I remind you that you were asking about the middle of 1930 and not 1932.

Q. What is the date of these letters you have?

A. I testified two or three times I did not have any such letters.

[fol. 672] Q. This information, what is the date of that information?

A. The entire year of 1930 and into 1931.

Q. Is that the earliest period you have covered with such type of pipe?

A. Oh, dear me, no, I have prices of pipe that run away back to the year 1860 something.

Q. The prices prior to 1930, are they based upon the published trade journal reports?

A. Many of them.

Q. Isn't it a fact that money today and during 1931, if it could be obtained, cost considerably more than it did during the years prior to 1931?

Mr. Light: Are you referring to the money the customers pay?

Mr. Hebel: Money for construction purposes.

The Witness: I think the re-discount rate in the Lima district today is about 2 per cent.

By Mr. Hebel:

Q. What price are utility bonds selling today as compared with the price in 1930 or 1929?

A. Some of them at a premium; many of them at a discount.

Q. Is the general price of utility bonds today higher or lower than it was in 1929?

A. You will have to define——

Mr. Light: Is it necessary to take that time with that?

Mr. Hebel: If we do not fill the record with general statements and other evidence that commodity prices have declined, which we will all admit has occurred during the last year, the Commission certainly is interested in the situation as to the cost of money. The witness testifies that 5 per cent. is all the returns which this company is entitled, and one reason he gives for that is because there has been a period of declining commodity prices since the [fol. 673] date of this appraisal. If that is correct, we certainly are entitled to show by this witness whether he has any information as to what direction costs of money have gone during that period and try to match up this claim that we only have to be allowed 5 per cent. because our rate base is lower than it was in 1928 with his view on the cost of money today as compared with 1928 and 1929.

Mr. Light: If you care to take into consideration that the gas company is not furnishing the consumers money but the consumers are furnishing the company money, we are perfectly willing that you take that into consideration.

Chairman Hopple: I do respectfully suggest that you make every effort to confine the testimony within the limits of what is reasonable and proper without going into fields beyond those limits. This witness in his opinion said after the date certain, based upon the present value, the then present value of the company's property that was used and useful in furnishing gas service to its customers was 5 per cent. Now, I can't see if you are attempting to show that subsequent to that date certain there has been a gen-

eral decline or rise in material or labor prices, that you are going to be the gainer by going into the most minute details. I think you can rest your case safely upon this basis so far as your cross examination of this witness is concerned; if he says there has been a decline, how much of a decline as to labor and material prices and costs? If this witness says there has been a rise or decline, so far as the cost of money and financing is concerned, that is his opinion. It is proper and reasonable under all the circumstances to go into all the thousand and one details to ascertain just how he comes to that conclusion, keeping in [fol. 674] mind he is qualified in some reasonable way at least as an expert witness? I am submitting this question to you because we are taking time that is of no moment to anyone in the judgment of the Commission. This Commission will take notice, as it properly should, of this witness' answers the same as it would of any other witnesses' answers. If he has been evasive and hesitant to answer, that is a circumstance, so far as his testimony is concerned, which will be considered the same as any other witnesses' testimony. May I add that if you have testimony of your own to refute what this witness says on the question of prices, introduce that testimony and rest the case.

Mr. Hebel: We will conform with the suggestions of Commission and cease our cross examination.

Chairman Hopple: I do want to be fair to both sides in this case, and I think we want to be fair otherwise. I do not apprehend as a matter of good conscience at this time, and in the light of what I said, that there has been anything suggested or done that is going to be prejudicial one way or the other to either side. I think there is sufficient testimony for the Commission to decide on these questions. If you agree, all right; if you do not agree and insist upon the examination, of course, that is your privilege.

Mr. Hebel: We are certainly desirous of proceeding in the manner the Commission wishes. That is all.

[fol. 675] Redirect examination.

By Mr. Light:

Q. Mr. Allensworth, I want to present to you City's Exhibit A-4, and ask you whether or not that is a copy of the

order of this Commission in this case furnished to you by this Commission?

A. It is.

Q. I will ask you whether or not on the attached sheet of the summary of the finding in this case, whether or not that finding as expressed at the top reads, "The West Ohio Gas Company, Lima, District"?

A. It does.

Q. Is that the data you were referring to when you distinguished between the figure of $1,901,696.26 and $1,888,-019.61?

A. It is.

Q. I will ask you whether or not in your consultation with Engineer Dabe of this Commission you further verified the fact that this figure contains items outside the corporate limits of the city of Lima?

A. That was verified by my assistant, yes.

Mr. Light: We offer City's Exhibit A-4 in evidence. Some criticism was offered on the witness as using the wrong figure. This is the order of the Commission furnished by the Commission reading, "Lima District."

Chairman Hopple: It may go in.

And thereupon the document above referred to is admitted in evidence on behalf of the city of Lima, Ohio, and is herewith submitted and marked City's Exhibit A-4.

[fol. 676] By Mr. Light:

Q. In your Exhibit A-3 you testified on cross examination that figures used from pages 1 to 25 were arrived at by allocation. I will ask you whether or not in all those exhibits furnished by the utility in this case, whether any attempt has been made to confine the figures to the city of Lima?

A. None that I know of.

Q. Have any figures been offered by the West Ohio Gas Company of the city of Lima in any of their exhibits as far as you know?

A. No, sir.

Q. Did you take the figures from the books and allocate them to the city, excluding suburban territory and Cridersville?

A. Yes.

Q. Is that the way you arrived at the figures on pages 1 to 25 in City's Exhibit A-3?

A. Yes.

Mr. Light: That is all. We will rest.

Chairman Hopple: The city is through?

Mr. Light: Yes.

And thereupon the City of Lima rested.

Chairman Hopple: What further, if anything, on the side of the company?

Mr. Hebel: We probably will have two witnesses yet. I would like not to put them on until after lunch.

Chairman Hopple: All right, we will recess at this time until 1:30 o'clock this afternoon.

And thereupon a recess was taken until 1:30 o'clock P. M. of same day.

[fol. 677] Afternoon Session

Tuesday, July 19th, 1932.

And be it further remembered that the West Ohio Gas Company, further to maintain the issues on its part to be maintained, offered and introduced in testimony on its behalf, the following evidence, to-wit:

E. L. Heyser, called on behalf of the West Ohio Gas Company, being first duly sworn, testified as follows.

Examined by Mr. Hebel:

Q. State your name?

A. E. L. Heyser.

Q. You are the same Mr. Heyser who testified before in this cause?

A. Yes.

Q. And what is your business or profession?

A. Appraisal engineering.

Q. With what company?

A. Day & Zimmerman, Inc.

Q. You made an appraisal and valuation of property involved in this case?

A. Yes.

Q. Have you since the last hearing, made an investigation and prepared a statement as to the trend of construction costs during the period subsequent to March 31st, 1928?

A. Yes.

Q. I hand you a document marked for identification purposes company's Exhibit 108, and ask you to examine that and state whether that sets forth in summary form the [fol. 678] result of your study as to trends of construction costs during the period mentioned?

A. Yes. it does.

Q. Will you state to the Commission the method by which that exhibit is built up and the explanation of the data shown in the various columns of the exhibit?

A. The classes of property represented in the lefthand column is taken from the Commission's order as of January 27, 1932, with the exception of land. We have not included the land in there because that would not affect the trend of construction. The figures in column 1 headed, "Commission's Reproduction Value as of 3/31/28 and stated in its order of 1/27/32" are the figures that appear in the Commission's order of that date with the 7 per cent. overheads added into each individual item or class of property. That makes it easier of comparison.

Q. So that those figures represent the findings of value by the Commission in its final valuation order in this case including the overheads allowed by the Commission?

A. Yes.

Q. Or all the physical property excluding the land?

A. Yes.

The next two columns are headed, "Change in Value as of December 31st, 1928," which means change from the March 31st, 1928 values.

The first column shows the per cent and conversion factor.

The second column shows the result of applying those percentages to the amounts found in column 1.

Q. Will you please explain the per cent. and conversion factor and tell the Commission how that was developed and [fol. 679] the sources of information from which the data was obtained?

A. The per cent. and conversion factors are based upon the relation between the construction index numbers existing on March —— or the end of March, 1928 and the month

of December, 1928. Those index numbers are the result of a study of the trends of costs of the various commodities entering into the construction of a gas property similar to the one existing in Lima and owned by the West Ohio Gas Company. The sources of information covering those trends include such publications and trade journals as Engineering News Record, Iron Age, The United States Bureau of Statistics, the Gas Age Record, as well as from the purchasing department records of one of the companies with which I have been affiliated.

Q. And the amount of reproduction cost, as indicated in column 3 for the month of December, 1928, is obtained then by multiplying the Commission's reproduction value as of March 31st, 1928 by the conversion factor appearing in column 2?

A. Yes.

Q. And represents the trend of construction for December, 1928 as compared with March 1928?

A. Yes.

Q. You have in pen at the bottom of the page certain figures; state what those represent.

A. That represents the Commission's value of the transmission main allocable to the Lima district, including the Commission's overheads, which, added to the total, represents the total for the various classes of property designated and excluding land and rights of way, but including the transmission main.

Q. What did you find to be the trend of construction costs for the exact classes of property included in the prop-
[fol. 680] erty of the West Ohio Gas Company used in serving gas to Lima for December, 1928, as compared with March 1928?

A. 3 per cent. higher.

Q. Including the transmission?

A. Including the transmission main, yes.

Q. 2.3 per cent. higher?

A. Yes, 2.3 per cent. higher is the weighted average including all of the classes of property.

Q. Are your columns 4 and 5 developed in the same way except using the changes for the period of December 1929?

A. Yes.

Q. And what was the relationship between construction costs in March, 1928 and December 1929?

A. They are the same, on the same level, 100 per cent.

Q. And column 6 and column 7 are figures developed the same way for the period of December 1930?

A. Yes.

Q. And what was the relationship between price trends for these classes of property during that month March 1928?

A. 99.4 per cent. or about .6 of one per cent. lower than March 1928.

Q. Columns 8 and 9 cover December 1931?

A. Yes.

Q. And what is the relationship between costs of construction for those classes of property during that month and March 1928?

A. 94 per cent., or 6 per cent. lower.

Q. Columns 10 and 11 cover the month of May, 1932?

A. Yes, sir.

Q. And what is the change in construction costs for these various classes of property during that month as compared with March 1928?

A. 90.1 per cent. or 9.9 per cent. lower.

[fol. 681] Q. The typewritten figures include all the property except land and the transmission main but to get a comparative figure we put in the transmission main. Were the sources of information from which you developed this exhibit as to trend of construction prices, the same sources from which you obtained information as to the cost of material for valuation purposes?

A. In some cases, yes, other cases, no.

Q. Explain that statement.

A. The construction materials, pipe, brick, gas meters, skilled labor, unskilled labor, come from the general sources of information including the Engineering News Record, Iron Age, United States Bureau of Labor Statistics, and the cost of equipment and machinery comes from the purchasing department of the utility which I have been associated with for a number of years and which extends that courtesy to me. I also get those trends from the construction department.

Q. What company?

A. The United Gas & Fuel Company. Street main labor is taken from the monthly reports of the various companies reporting street main costs to that company.

Mr. Hebel: I desire to offer in evidence Company Exhibit 108.

Chairman Hopple: It may be received.

And thereupon the document above referred to is admitted in evidence on behalf of the West Ohio Gas Company and is herewith submitted marked Company Exhibit 108.

[fol. 682] Cross-examination.

By Mr. Light:

Q. Mr. Heyser, a substantial part of this cost is labor, isn't it?

A. No, sir, materials.

Q. There is no labor in these figures?

A. Yes, weighted.

Q. What price of labor did you use; what is the price of common labor in Lima, Ohio today?

A. I haven't that with me.

Q. Did you use that figure?

A. No, sir.

Q. You did not use the price of labor in Lima?

A. I used that as a comparison, but the index numbers shown here are based upon the general trend of labor as taken from the Bureau of Labor Statistics and also from the general labor trends.

Q. What labor rate are you figuring in these figures?

A. I haven't those details with me.

Q. About what?

A. 45 to 50 cents common labor, 65 to 75 cents for skilled labor, and the union labor rates for carpenters, brick layers and that type of labor.

Q. Did you make any investigation of labor conditions in Lima, Ohio and the price of labor in Lima?

A. Yes.

Q. You know that common labor in Lima is 30 cents an hour?

A. It was 45 cents an hour for common labor.

Q. Do you know that common labor in Lima in March 1928 was 40?

A. You could get labor for that but we used 45.

Q. You say common labor in Lima today is not 30 cents?

A. I don't know what it is today.

Q. On May 31st, 1932?

A. I don't know.

Q. But you used 45 cents?

A. That is the average. May I explain, I do not know what the labor rates are in the various classes of labor [fol. 683] which are represented in these index numbers.

Q. But you used 45 cents for common labor?

A. In Lima, in preparing the appraisal at Lima.

Q. You mean in 1928?

A. Yes.

Q. What did you use here?

A. I did not make any investigation.

Q. What are you giving us here?

A. I am giving you the general trend of construction costs based upon the studies which are made by various students of valuation.

Q. One of the chief students of that is Mr. Almer?

A. I don't know him.

Q. Wasn't he the author of the articles used in the Engineering News?

A. No, sir, not that I know of.

Q. Do you know who the authors were?

A. The Engineering News Record have a corp of men all over the United States collecting such information.

Q. Then your exhibit here is not applicable especially to Lima?

A. In a general way, but it is not made——

Q. You made no study of conditions in Lima?

A. No, sir.

Q. I want to ask you, you said that pipe, cast iron pipe, various kinds of pipe, have—the change in the price of that pipe has been about 10 per cent. in the last four years?

A. Cast iron pipe in March 1928 was 168; I am quoting the index numbers.

Q. I am using the per cent., the second column on your exhibit.

A. That column has weighted material and labor in it. The index number in May 1932 was 126.

Q. And in March 1928?

A. 168.

Q. Whose index was that?

A. This comes partly from the Engineering News Record [fol. 684] and partly from the Iron Age and from purchases.

Q. What percentage is that?

A. That is about a 25 per cent. drop.

Q. How much of a reduction have you made on labor?

A. Are you speaking of skilled labor, street main labor?

Q. Is there a difference?

A. Yes.

Q. How much reduction have you made in common labor, in per cent.?

A. 28.4.

Q. How much reduction have you made in skilled labor?

A. 25.6.

Q. Those figures are true as to all of these items on pipe; there has been not much reduction in per cent. between March 1928 and May 1932?

Chairman Hopple: You mean material price?

Mr. Light: Material, labor, common and skilled?

The Witness: That would be true, probably, of the pipe within the plant, but the street main labor has a different trend.

By Mr. Light:

Q. What kind of labor is that and how do you account for that?

A. That is pipe—the labor that is used in laying mains, services and that type of construction which is not common, or skilled labor; it is a combination. Street main labor has increased from 272—from 286 in March 1928 to 300 in 1932.

Q. In Lima?

A. I haven't made an investigation.

Q. You don't know anything about Lima?

A. I don't think the street main labor has had any change in the Lima branch since our investigation.

[fol. 685] Q. Most street main labor is performed by gas companies and other public utilities?

A. Any utility having a distribution system——

Q. Peculiar to work provided by public utilities, laying lines?

A. Yes.

Q. Go to Exhibit 108 and take cast iron pipe less than 6 inches, in 1928 you had a value of $61,973?

A. Yes.

Q. And in May 1932 you had a value of $57,635.00?

A. Yes.

Q. Or a difference of about 7 per cent. decrease, that is right?

A. Yes.

Q. You tell me that your cost of material has decreased 25 per cent. and the cost of common labor decreased 28 per cent., the cost of skilled labor decreased 25 per cent.; what other elements went in there to bring that back up to 7 per cent.?

A. The street main labor controls.

Q. The street main labor controls?

A. Yes. The index number in March 1928 was 286 and it was 300 in May, 1930.

Q. You say you don't know anything about whether that is true in Lima or not?

A. I have not made an investigation at this time.

Q. What per cent. of that figure of $61,973 is street labor?

A. 60 per cent. pipe and 40 per cent. street main labor.

Q. There is neither a common or skilled labor in that?

A. That 60 per cent.——

Q. In the 40 per cent.? A. No, that is street main labor.

Q. Has there been an increase in the price of trenching machines to dig trenches to the street lines—pipe lines?

[fol. 686] A. In what period?

Q. In the same period of time. You say street labor has gone up. That is the matter of digging those trenches and refilling them?

A. And laying the pipe.

Q. Laying the pipe is the smallest item on that?

A. No, sir, I would not say it was the smallest item.

Q. Would it cost more to dig the trench than to lay the pipe?

A. It all depends on the nature of the digging.

Q. In Lima, you have no rock in Lima; you have the soil to dig out.

A. Yes, they have some rock.

Q. Very little rock?

A. Some of it is hard digging, digging in rock.

Q. This study you are presenting in Exhibit 108 has no direct relationship to Lima; it is a general figure over the country?

A. It is a general figure, yes.

Q. Will you please explain to me how the cost of that pipe can be reduced 25 per cent. and that cost be 60 per cent. of the entire cost of the item and this 45 remain stationary and still only result in a 7 per cent. reduction?

A. That is the way it works out.

Q. 25 per cent. of 60 is 15?

A. 25——

Q. It is 15; that would then become 15 per cent. of 100 per cent., adding 60 and 40?

A. There are other elements that enter into it.

Q. What are the other elements?

A. Joint material and fittings.

Q. What per cent. of the $61,973 is joint material?

A. I have no way of telling that right now.

Q. That would be a fraction of one per cent.?

[fol. 687] A. No, sir, probably be more than that; it might be 2 or 3 per cent.

Q. Joint material at the ends of these pipes?

A. Cast iron pipe.

Q. What length do you put these pipes in the ground?

A. Some 10 feet, some 12 feet.

Q. And the things you put around the joint to make them more solid is liable to run 2 or 3 per cent. of the entire cost of labor and material of that line?

A. Depending upon the type of joint.

Q. I am talking about Lima?

A. That is my judgment.

Q. All you do is caulk the joint?

A. You have material in there.

Q. You use lead?

A. Cement and lead.

Q. Anything else?

A. I can't recall right now. I don't have the details on which this was made up.

Q. You can't give any explanation of these figures?

A. In a general way it will show the general trend of construction costs by this method.

Q. Your answers on the item of $61,973.00 would be the same for the item of $508,560.00?

A. No, sir.

Q. What is different about that?

A. That is black steel, galvanized steel pipe, and wrought iron pipe.

Q. What about that?

A. That probably has a different trend.

Q. That trend has been still lower than cast iron pipe in price?

A. Steel pipe, the index number in March, 1928, was 208 and in May, 1932 was 197.

Q. Where did you get that index?

A. Steel pipe, wrought steel pipe comes from the Engi- [fol. 688] neering News Record and based upon Pittsburgh prices.

Q. That is the trade journal price?

A. That is what they quote to the Engineering News Record as a trend. It is not a price they might quote——

Q. So your testimony to this Commission is that from March 1928 to May 1932 wrought iron pipe declined in price 11 per cent.?

A. Yes, 11 points.

Q. About 5 per cent.?

A. Yes.

Q. Is that also true of steel?

A. Yes.

Q. That is true of steel?

A. Steel and wrought iron.

Q. There has been a 5 per cent. decline in steel, both black and galvanized steel, and in wrought iron of approximately 5 per cent.?

A. Yes.

Q. And the same elements of cost, other than the cost of materials, would enter into a steel pipe or a wrought iron pipe or a cast iron pipe?

A. Yes.

Q. Take the same trench, the same backfill, the same caulking?

A. Yes.

Q. Wrought iron has been reduced 25 per cent., declined 25 per cent., is that right?

A. Wrought iron?

Q. Cast iron?

A. According to these figures, yes.

Q. Explain to the Commission how you arrived at the same per cent. under all those various items, 93 per cent., with that difference in price?

A. That is due again to the weightings of labor and material.

Q. I asked you if the same elements of labor, so far as the trench and backfill were concerned, were the same, and you said yes. They are not the same?

A. That is due to the fact we have used the same proportions for mains all the way through, whether wrought iron, [fol. 689] steel or cast iron.

Q. What proportion did you use?

A. 60 per cent. pipe and 40 per cent. labor.

Q. 60 per cent. pipe and 40 per cent labor. Then what per cent. have you reduced your pipe?

A. The index number for mains as weighted, cast iron, wrought iron, steel and all types of mains, for pipe and labor, in order to get a general trend of the entire distribution system——

Q. Do I understand you were incorrect a moment ago; I called your attention to cast iron pipe, and you told me that, by referring to data before you, there has been a reduction of 25 per cent., decline in the market on cast iron pipe.

A. Yes.

Q. And you have not taken into consideration any reduction in labor because of that peculiar kind of labor that only public utilities hire there has been no reduction?

A. Street main labor.

Q. And then I asked you how you arrived at 93 per cent. and you said you did not know what factors made that difference, which would be 15 per cent.?

A. I should have included in the weighting for the index number of the mains, the various kinds of pipe.

Q. Then you have not made any reduction of 25 per cent. in the cost of cast iron pipe in this calculation of Exhibit 108 except perhaps 5 per cent.?

A. The weightings we have generally only, but I do not have the entire computation here; as I explained recently, it includes a certain amount of steel, wrought iron, galvanized iron and cast iron in order to make it generally [fol. 690] applicable to street main construction. It hap-

pens in this one report that the Commission has segregated the black steel, galvanized steel, and wrought iron pipe from the cast iron pipe, but in order to show the general trend of construction costs, I have used the same figures in each one of those, and that is the reason it comes out 93 per cent.

Q. This Commission has ascertained in the company inventory an item of $61,973.00 of cast iron pipe?

A. Yes.

Q. And you have testified to the Commission that the cost of that pipe has declined 25 per cent. in the period of time you have designated?

A. The cost of cast iron pipe?

Q. Yes, but in the exhibit you present to the Commission you show but a 7 per cent. reduction?

A. Because that same thing controls in the wrought iron pipe.

Q. Let us confine ourselves—just answer the question.

A. Yes.

Q. And as a matter of fact, it is not even a 7 per cent. reduction but a 5 per cent. reduction because you have made no reduction in labor?

A. We made the reduction in labor shown by the index number.

Q. You testified in that kind of labor you made no reduction, but increased the cost of labor?

A. That is true, it has increased.

Q. So you are saying to the Commission that in Lima the cost of labor, of digging and trenching and backfilling has increased?

A. The general trend of costs.

Q. The general trend of costs over the country on the labor of digging, trenching and refilling in your opinion and under your testimony, has increased in the last two years?

[fol. 691] A. Increased in the last two months, April and May of 1932.

Q. It has increased since March 1931 to May 1932?

A. Yes.

Commissioner Geiger: Where do you get the figure to justify the statement that labor in March 1932 is higher than it was in——

The Witness: In May and April 1932; April and May 1932 the index number was 300, and in March 1928 street

main labor is 286. That is predicated upon the trend of that type of labor as compared—the trend of the rates——

Commissioner Geiger: Just a moment; your investigation leads you to testify that that type of labor has increased in the last two years?

The Witness: According to the records of the company.

Commissioner Geiger: What company?

The Witness: The United Gas Improvement Company from which I get the labor trends.

Commissioner Geiger: How do you account for the fact that labor has gone up in that particular line where in general public knowledge it has gone down everywhere else?

The Witness: It may be they are changing the hours of work or the shifts in some way. I can't explain the reason for those increases.

By Mr. Light:

Q. What is the price of this kind of labor?

A. It varies in different locations.

Q. What is the price in Lima, Ohio?

A. I do not recall. It is in the record.

Q. What is trench labor; what is the difference between trench labor and common labor.

[fol. 692] Chairman Hopple: The Commission is familiar with that.

By Mr. Light:

Q. Your exhibit does not reflect—this exhibit does not reflect in the items on pipe any reduction of any kind of labor?

A. From the one period to the other, no.

Q. From March 31st, 1928 to May 1932 you show no reduction in labor?

A. No, sir.

Q. Of any kind?

A. No, sir.

Q. You show some increase?

A. Yes.

Q. You don't know how much?

A. Well, it can be figured out. It is 11 points—that is 14 points on street main labor. That is about a 5 per cent. increase.

Q. You show a 5 per cent. increase in labor?

A. Yes.

Q. And about 10 per cent. decrease in material to get the 7 per cent.; labor 40 per cent. and material 60 per cent.?

A. About that. I have not worked it out.

Mr. Light: That is all.

Redirect examination.

By Mr. Hebel:

Q. I think you gave figures that I do not have here on cast iron pipe. What was your index number in March 1928?

A. Cast iron pipe, March 1928, was 168.

Q. And what was your index number for cast iron pipe in May, 1932?

A. 126.

Q. Your index numbers are built upon the year 1913 as a hundred?

A. Yes.

Q. And built up for each month?

A. Yes.

[fol. 693] Mr. Hebel: That is all.

Chairman Hopple: Are you—I have forgotten your qualifications—are you also an engineer?

The Witness: Yes.

Chairman Hopple: Or are you an engineer and not an accountant?

The Witness: I have the schooling of an engineer——

Chairman Hopple: Without referring to any particular authority and merely as a matter of your own judgment or opinion, based upon observation and reading and studying, since March 1928 to March 1932, we will say, has there been a general decline in material price during that period that amounts to about 25 per cent.; would that be a reasonably fair average to say?

The Witness: No, sir.

Chairman Hopple: What would it be?

The Witness: It is nearer 10 per cent.

Chairman Hopple: For material now?

The Witness: Yes, material.

Chairman Hopple: Regardless of the kind of material except that it is material that goes into the construction of a gas plant in some form or other?

The Witness: Yes.

Chairman Hopple: We are speaking about gas operations; I am asking these questions with a gas operation in mind.

The Witness: Yes.

Chairman Hopple: During that same period of time, what would be the per cent. rate decline or rate per cent. decline for labor?

[fol. 694] The Witness: Up to the beginning of about the middle of 1931 there was practically no decline in labor.

Chairman Hopple: Until the middle of 1931?

The Witness: Yes.

Chairman Hopple: There was practically no decline?

The Witness: In the type of labor you would use in the construction and maintenance of gas property.

Chairman Hopple: What decline has there been since that time in 1931?

The Witness: Not more than—to my knowledge not more than about 5 to 10 per cent.

Chairman Hopple: When you speak of labor and decline of cost in labor, you mean to include all kinds of labor, skilled and unskilled?

The Witness: In the labor I have been discussing here, no; it is unskilled and skilled labor, which are more the type that would be the labor around a gas plant. The gas companies employ a class of laborers which they try to keep on their payroll all the time for main construction, because it is not an unskilled labor job to lay a main properly so that there will be no leaks.

Chairman Hopple: Are you prepared to give me a figure as it applies to gas companies in relation to the various kinds of labor that are used, what the decline in points would be from 1928, March 1928 to April or May of this year?

The Witness: These laborers, the skilled and unskilled labor, and street main labor, are the best indication, because that skilled labor would probably cover the various [fol. 695] types of mechanics, skilled mechanics that would be employed in constructing a gas property of this kind,

and they have not taken a reduction in wages; they have taken a reduction in time. I know companies I have access to and know they are only giving their men four or five days a week with the same rates. It is a reduction in revenue to them, but their rates are not reduced. Therefore, if they were employed 5½ or 6 days a week, their compensation would be practically the same as it has been over that whole period.

Commissioner Geiger: You think here has been an increased efficiency in labor and that those who are now employed four or five days do as much work as those who were heretofore employed six days?

The Witness: Well, the general tendency would be, yes, but it is not true, because they say, "Well, we will make the work stretch out."

Commissioner Geiger: Are you familiar with the operation of the gas company in Lima?

The Witness: I have not made a study of it in the last six months, so far as the operation——

Commissioner Geiger: Do you know whether or not there has been a reduction in wages of their men in the last four years?

The Witness: I cannot say from actual knowledge, no.

Commissioner Geiger: Did you make any personal investigation?

The Witness: Up to the time of this investigation there had not been any reduction.

Commissioner Geiger: Have you made any investigation [fol. 696] of the actual condition of labor which is employed by this company now under investigation in order to make out this table?

The Witness: You mean the labor in Lima?

Commissioner Geiger: The labor in Lima employed by this company?

The Witness: No, sir, I have not made that investigation.

Commissioner Geiger: Is it possible there may have been some reduction in labor there more than you have testified to?

The Witness: It is possible.

Commissioner Geiger: Would it not be a better plan in order to inform the Commissioner to tell us what has happened to the labor rather than give us a table of composite reports of labor all over the United States?

The Witness: That would be the proper thing to do to satisfy the Commission, I will admit that. The time was not available to make that at this time, and we felt that this general trend would be indicative of the trend of construction costs, including material costs, labor performance, over a normal period. You get into the last two years and a half, we have a lot of distress there and we have had the experience of men who come in and say they would work for any amount of money. What is the use of putting them on? They won't do the work right, they are not qualified, they will loaf on you. You have got to have several bosses to keep them working, so my only claim for this statement is a general trend indicative of what conditions might be under normal circumstances.

Commissioner Geiger: The only inquiry I was making was whether or not there was a decrease in labor cost in this particular plant and the relation to such classes of labor [fol. 697] you have testified about?

The Witness: They have only three classes of labor up there which would apply in the construction of a gas plant.

Commissioner Geiger: Have they got men to dig a trench?

The Witness: That is the type that would be, the unskilled and the street main labor. The skilled labor you might interpret to mean the carpenters and bricklayers and men like that. They haven't such type of men on their payroll.

Commissioner Geiger: Do you count labor of that character, if you were going to build the plant, was less than it was four years ago?

The Witness: You can get them for less.

Commissioner Geiger: At what price do you put them in the estimate, the old price or the present price?

The Witness: I am assuming the trend shows a downward trend in skilled labor; the labor rates are taken from the Bureau of Labor.

Commissioner Geiger: Directing your attention to column number 10, I notice the first group of figures you have marked .75 factor. Is that correct as to all the items that are shown in the lefthand column under "Class of Property"?

The Witness: That 75 cents would only apply to Town Border, meter and Regulator station.

Commissioner Geiger: The per cents you have marked here, per cents and conversion factors in column number 10, relate to the per cent. as compared to 100 with the items set on in the first column?

The Witness: Yes.

Commissioner Geiger: And they are all below 75 per [fol. 698] cent., either 75 or below.

The Witness: No, sir, there is a 78, 79, 93.

Commissioner Geiger: No, the first group of figures?

The Witness: Yes.

Commissioner Geiger: Then with the exception of one item of 78 and another item of 79, all the balance are 75 or less?

The Witness: Yes.

Commisisoner Geiger: The second group then relates to the different qualities of pipe——

The Witness: The distribution system.

Commissioner Geiger: And the distribution system is 93 per cent., is that correct?

The Witness: Yes.

Commissioner Geiger: When we get to the item that starts out on the first column of figures, $138,991.00, that is not below 100 in any column you have except in the column of 1930?

The Witness: Yes.

Commissioner Geiger: Where it is 98 per cent.?

The Witness: Yes.

Commissioner Geiger: And in 1932 it is 103 per cent.?

The Witness: Yes.

Commissioner Geiger: Just what does that line I have just referred to cover?

The Witness: That is the distribution services, black steel pipe, galvanized steel pipe and wrought iron pipe.

Commissioner Geiger: Less than 6 inches in diameter?

The Witness: Yes.

Commissioner Geiger: Are we to infer from that that at [fol. 699] no time since 1928 down to the present time have those items of pipe been less than they were in 1928, except in 1930?

The Witness: 1930, that is true.

Commissioner Geiger: How do you explain that? Our general understanding is that all material has come down, and we hope that is not true, but do you get it from a lot

of figures you get from all over the United States; where do you get that?

The Witness: That comes from the Engineering News Record, the Iron Age and the quotations given in those publications on pipe of that material.

Commissioner Geiger: That is not steel pipe, necessarily?

The Witness: Some of it is steel.

Commissioner Geiger: Cast iron pipe?

The Witness: Services and pipe, black steel, galvanized steel and wrought iron pipe.

Commissioner Geiger: And does not say how much is steel, how much is wrought iron or how much galvanized steel?

The Witness: Of course, that is the terminology applied by the Commission. That could be gotten definitely. It is set forth in the inventory.

Commissioner Geiger: You have found out that it was at no time except in 1930 under 100 per cent.; you group it however, all in pipe, steel, galvanized steel and cast iron pipe?

The Witness: Yes.

Commissioner Geiger: Wrought iron pipe under 6 inches in diameter. Have you made any computation by taking any one of these particular items and carrying it all the way through, or have you found out how much it was in [fol. 700] your plant and given the weighted average on that?

The Witness: No, sir.

Commissioner Geiger: What item have you taken after the item that was given you as the plus 100 except in 1930, steel pipe?

The Witness: Steel pipe.

Commissioner Geiger: How much steel pipe is in your plant compared with iron?

The Witness: I do not recall the relation.

Commissioner Geiger: What you have presented to us is the picture of the value of the distribution system of pipe under six inches, provided it was all steel pipe?

The Witness: No, sir, that is—steel pipe has remained fairly constant. Under the heading "Services" you have got the elements which enter into it.

Commissioner Geiger: What about wrought iron pipe, has it come down?

The Witness: No, wrought iron follows very closely the cost of steel pipe.

Commissioner Geiger: As I understand, your position is you have presented us a figure in which you have grouped under your distribution services steel, black steel, galvanized steel and wrought iron pipe and have indicated that at no time except in 1930 was it less than 100 per cent., and then it was 98 per cent., is that correct?

The Witness: Yes.

Commissioner Geiger: Then let me ask you whether or not you have made a proper weighting of the prices as between black steel, galvanized steel and wrought iron pipe [fol. 701] actually in use in this plant?

The Witness: I have.

Commissioner Geiger: How can you say your table is correct?

The Witness: I do not say it is correct when applied directly to the Lima situation. It is generally true of that type of utility property and is only given for the purpose of indicating the trend. As I stated before, we did not have the time to make all that segregation. The weightings of the services include 50 per cent. steel pipe, 50 per cent. wrought iron pipe. That is the cost of pipe because galvanized iron pipe has a trend very closely to the black steel.

Commissioner Geiger: You have taken it, assuming that all those three different qualities of pipe have come down or remained up in harmony each with the other?

The Witness: Yes.

Commissioner Geiger: So it has not been necessary to find out how much of one kind there was in this plant?

The Witness: We did not do that.

Commissioner Geiger: In your judgment it would have amounted to practically the same thing?

The Witness: Yes.

Commissioner Geiger: You please us very much by showing us we are away off on our general thought that everything in this country was going down and down. You maintain here—the figures show that that class of pipe is higher than it was in 1928, and it has been higher ever since 1928 except in 1930, is that right?

The Witness: That is true if the sources of information [fol. 702] are true.

Commissioner Geiger: In your schedule here that you have presented, you have shown in the distribution lines that the black steel, galvanized steel and wrought iron pipe have gone down to 96 per cent. in 1931, and it is less than six inches in diameter, whereas in your distribution mains, it is up to 101?

The Witness: May I correct that? This is for services (indicating) and these are for distribution mains (indicating). It is a different weighting for materials. The index numbers I have predicated the trends of mains on include the three different types of pipe, cast iron, steel and wrought iron. The services to which you refer as remaining higher, with the exception of the period December 31st, 1930, is weighted between black steel and wrought iron, and there 50 per cent. of the cost of the services is included in material and 50 per cent. labor. In the mains it is 60 per cent. material and 40 per cent. labor.

Commissioner Geiger: I do not quite understand it. Take under your column No. 10, your iron pipe, which is black steel, galvanized steel, wrought iron pipe, and distribution main is put down in May 1932 as 93, and at the same time for your distribution services the same kind of pipe, as far as the disignation is concerned, is 103. Where is the difference between 93 and 103, because one is distribution mains and the other is distribution services?

The Witness: No, sir, the mains, gas mains index trend, factors, is predicated upon the inclusion of cast iron pipe, steel pipe, wrought iron pipe, weighted. Then there is 60— [fol. 703] in the final determination of the index numbers we weight the material 60 per cent. and the labor 40 per cent. Cast iron pipe has gone down faster and to a greater extent than steel or wrought iron, and the services, gas services, which are all steel, wrought iron or galvanized steel, are weighted 50 per cent. material and 50 per cent. labor.

Commissioner Geiger: One other question, in these indexes you have here, which you call per cent. and conversion factors, is there an element of labor that is taken into consideration?

The Witness: Yes.

Commissioner Geiger: And what per cent. of decline of labor have you figured on?

The Witness: That labor is predicated upon the skilled labor.

Commissioner Geiger: You figured on 45 cents an hour labor?

The Witness: No, sir, I figured on the trend, but I judge it would be about 45 cents in Lima at the time we made our inventory, but these factors are the results of taking the labor rate changes from month to month as reported to these various sources of information, and that indicates the trend it might go. Of course, it is true that in the last year or 15 months there has been a great deal of distress and a great deal of distress quotations on materials and equipment. Also the distress condition has affected the labor, but if you are going to replace this property it would be impossible to get all the materials and equipment on the spot marked at the manufacturers, and immediately you do that [fol. 704] you get out of the distress period and those prices go upward. If those distress conditions were respected in this trend, it might be a different trend, but what we are using these for is to guide us in estimating what it would cost to build a utility property or portion thereof so when we go to the Board of Directors and ask them for the money, we are not going to be shy of the money that is absolutely necessary, so we keep away from the distress conditions, and the original thought in determining these conversion factors was to guide us in making our estimates for construction.

Commissioner Geiger: As I understand your remark, you mean this, that in making your estimate you do not propose to make an estimate too low; you want to make a safe estimate?

The Witness: Yes.

Commissioner Geiger: And this is a safe estimate and probably a margin of safety in it?

The Witness: Yes. If the time was available and the result would warrant the cost, we would not attempt to show what it would cost today—that is May 31st, 1932—to build this property in Lima by this method of trend factors. I would get the actual quotations for actual construction purposes, and also we would predicate our cost upon the actual condition of labor.

Commissioner Geiger: If you would pursue that plan, do you think it would be lower than you have here?

The Witness: I think it would be practically the same.

Commissioner Geiger: Do you know what percentage of cut in wages in organized labor in the steel mills was taken [fol. 705] in the last two years?

The Witness: No, sir, I do not.

Commissioner Geiger: Wasn't there an agreement of a 10 per cent. cut?

The Witness: I don't know whether that agreement ever went through or not. They cut a lot of time, they cut time; that is where the men lost their incomes, on loss of time, but their rates are not changed so materially.

Commissioner Geiger: The rate per hour is the same?

The Witness: Not the same; some have taken a 10 to 15 per cent. cut.

Commissioner Geiger: That is all.

Redirect examination.

By Mr. Hebel:

Q. If you were going to reprice this entire property for each of these periods, it would practically necessitate a valuation for each of these periods?

A. Yes.

Mr. Hebel: That is all.

Recross-examination.

By Mr. Light:

Q. On your transmission line you have a reduction of 7 per cent. What per cent. did you use on materials?

A. The same percentage—60 per cent material, the same as distribution mains.

Q. It would be about 5 per cent?

[fol. 706] A. What do you mean, 5 per cent?

Q. The reduction in the price of material?

A. Yes.

Q. What, if any reduction did you use in the price of labor?

A. I used the same street main labor there.

Q. That was an increase?

A. That was an increase.
Q. On the construction of that transmission main?
A. Yes.

Mr. Light: That is all.

[fol. 707] And also—

L. F. DABE, called for purposes of cross-examination, being first duly sworn, testified as follows:

Cross-examined by Mr. Hebel:

Q. You may state your name.
A. L. F. Dabe.
Q. You are an engineer with the Public Utilities Commission who was in charge of a valuation of the property of the West Ohio Gas Company used and useful in serving consumers within the city of Lima, are you?
A. Yes.
Q. You testified heretofore in this cause?
A. Yes.
Q. Will you state to the Commission what property was included in the property which you inventoried in connection with this cause and whether or not that was the property used and useful in your judgment in connection with rendering gas service to consumers located within the city limits of the city of Lima?
A. We inventoried all the property within the city limits of Lima in the distribution system and the—in fact we inventoried all the property within the Lima district and then excluded from that the mains and meters without the city limits which—immediately without the city limits of Lima. The transmission line was inventoried entirely from 15 miles east of Kenton and that portion of it used for Lima was allocated to the city of Lima.
Q What about the services outside the city?
A. The services were taken out on the same basis the meters were. We did not go out and find out whether there were three light or five light or ten light meters that were without the city limits. We took the number of customers [fol. 708] that were out of the city and deducted five light meters for the number of customers held out where the records were kept as the city of Lima.

Q. And that was the practical method you adopted, to exclude all property which was used in connection with rendering service outside the corporation limits?

A. Yes, that was the theory; there might be 100 feet or 200 feet of pipe or eight or ten services out that we could not tell exactly.

Q. But you used that practical method in getting the figure which represented in your judgment the property used in serving the customers in the corporation limits?

A. Yes.

Q. So Mr. Dabe, was it on that basis you have just testified to and on that figure that you found the figure of $1,901,696.26 as the fair value in your judgment as of March 31st, 1928, of the property used and useful in serving consumers with gas within the city limits of the city of Lima, Ohio?

A. Yes, $1,901,696.26, that was the present value.

Mr. Hebel: That is all.

Examined by Mr. Light:

Q. You say there is no property in the $1,901,696.26 without the city limits?

A. Not to the best of my knowledge, not of any appreciable amount. There might be two or three hundred feet either way.

Q. You are an engineer?

A. Yes.

Q. And you are and have kept yourself familiar with the general trend of prices going into property such as we are investigating here?

A. Generally only.

[fol. 709] Q. It is true, is it not, that there has been a decline in labor prices, both common and skilled, of 20 or 25 per cent in the last two years?

A. There has been a decline. I would not say 20 or 25 per cent.

Q. In Lima common labor has dropped from 40 cents to 30 cents?

A. I don't know, I have not been in Lima for two years.

Q. But you recognize that as being approximately correct?

A. Yes.

Q. And that is also true of material?

A. You mean of gas company property?

Q. Yes.

A. That is true of steel and wrought pipe, but it is not true of cast iron pipe.

Q. Cast iron pipe has been—a decline of at least 25 per cent in the last two years?

A. In speaking of the valuation that we made of the West Ohio Gas Company's property in Lima, we used the price of $33.00 per ton, and that was March 31st, 1928. The present quotation of June 17th, 1932, is $33.00 a ton, so there is not any difference.

Q. The city of Lima in the last two years is buying for its water works cast iron pipe at 25 or 30 per cent of what they paid for it two years ago from the McLelland Company, manufacturers of pipe; how would you explain that?

A. I don't know, but those are our quotations on pipe. I think March, 1928, was the lowest price, according to the quotations from the American Cast Iron Foundry Company, in several years, and that was the price we used in the Lima valuation.

Q. Several years preceding that?

A. Yes.

Q. The price of black steel, galvanized steel and wrought [fol. 710] iron, those prices have come down about 25 per cent?

A. I don't know the exact figure, but I know they have come down 10 or 15 maybe 20 per cent.

Chairman Hopple: You mean to say that the prices of wrought and steel pipe, present day prices, as against March 31st, 1928, prices, are lower today than then?

The Witness: Yes, generally.

Chairman Hopple: And are you able to tell us about what per cent?

The Witness: Not on steel and wrought. I have not priced any property, only water works property in cast iron pipe lately, and that is the only rate I am familiar with.

Commissioner Geiger: What is the condition of cast iron pipe?

The Witness: It is the same as it was three years ago. We have the same quotations on it, although it had gone up in the interim between March 31st, 1928, to a higher price, and I presume it is down some now, to what it was a year ago, maybe a year and a half ago.

Chairman Hopple: That is all.

Mr. Hebel: That is all we have.

Mr. Light: The city has nothing further.

Mr. Hebel: If it please the Commission, I would like to say that at the conclusion of the hearing in June Commissioner Bricker asked me to find out if I could the fact as to the relationship between the Utilities Securities Company and the Midland Utilities Company and the situation in reference to the sale of the preferred stock of the West Ohio Gas Company.

I find that the stock of the Utilities Securities Company [fol. 711] is owned 10 per cent by the Midland Utilities Company or the Midland United Company, I am not sure which, but they are both associated companies. That interest was acquired in or about November, 1924, and the company never has owned in excess of that 10 per cent of the stock. The remaining stock is owned by the Commonwealth Edison Company, the People's Gas, Light & Coke Company, the Public Service Company of Northern Illinois, and the Middle West Utilities Company.

The preferred stock of the West Ohio Gas Company was originally acquired by the Midland Utilities Company, which at that time acquired the common stock of the West Ohio Gas Company. That stock was sold to the Midland Utilities Company at 87½ per cent, the price fixed by the Commission.

The earning situation at that time was not such that all the stock could be marketed, and there were two classes of preferred stock created, class A preferred stock, which consisted of 3000 shares of the 7500 shares authorized by the Commission to be issued, and a class B preferred stock, which consisted of the remaining 4500 shares, and which, in turn, was divided into three shares, one, two and three.

The class B preferred stock was made subordinate, both as to dividend payments and liquidation price, to the class A preferred stock.

The class A preferred stock was then placed on the market in May, 1925, which was about six months after the West Ohio Gas Company was organized, and it was sold over a period of about a year and a half, the sale being completed in November, 1926. The sale price of that stock to the public was $98.00, and the commissions paid to the selling company [fol. 712] was $5.25 per share.

Under the charter of the West Ohio Gas Company the 4500 shares of class B preferred stock could not be converted

into class A preferred stock, until the earnings of the company had assumed certain proportions, the result being until that situation arose the class B preferred stock was entire- deferred to the Class A, and it was not possible to dispose of it to the general public. It was not until the spring of 1931 that the class B stock was converted into class A preferred stock, the situation under which this conversion could take place having arisen in the meantime, and then in the early summer of 1931, an attempt was made to market the remaining 4500 shares of the preferred stock, it all being preferred stock of one class then.

That attempt resulted in the sale only of 833 shares of the preferred stock, which was sold at 98, and the Midland Company consequently had to retain and still retains the remaining shares, or about 3700 shares of the preferred stock.

The market price of the preferred stock of the West Ohio Gas Company at the present time,—it is an unlisted stock, and is around $45.00 with practically no sales taking place.

That is the preferred stock history of the company that Mr. Bricker inquired about.

Chairman Hopple: Before finally submitting the case, a motion was made this morning, the effect of which was to strike out City's Exhibit A-3, pages 1 to 13 and 26 to 68.

Mr. Hebel: 1 to 16 and 26 to 31, both inclusive, and the title page preceding page 26.

[fol. 713] Chairman Hopple: That motion will be overruled, to which exceptions may be noted. There was an objection also to the offering of the exhibits, and that objection will be overruled, so the case can be considered submitted.

Mr. Hebel: Note an exception.

Chairman Hopple: Exceptions being noted.

And thereupon the document above referred to is admitted in evidence on behalf of the city of Lima, Ohio, subject to the above objection and exceptions of counsel for the West Ohio Gas Company, and is herewith submitted marked City's Exhibit A-3.

And thereupon the West Ohio Gas Company rested.

And thereupon the City of Lima rested.

And the foregoing was all of the evidence offered, introduced and admitted on behalf of the West Ohio Gas Company and on behalf of the City of Lima, Ohio, on this hearing of this cause.

[fol. 714]

PAGE 18 OF COMPANY EXHIBIT No. 1

West Ohio Gas Company, Lima, Ohio

Table 1

Method of determining percentages for allocating to each District the proper proportion of the March 31, 1928 "Reproduction Cost" of the transmission main, based on the amount of gas purchased during period from April 1, 1927, to March 31, 1928.

	Pipe Line, Point East of Kenton to Kenton		Pipe Line, Kenton to Lima		Pipe Line, Lima to Cridersville		Pipe Line, Cridersville to Wapakoneta		Pipe Line, Wapakoneta to St. Mary's		Pipe Line, St. Marys to Celina	
District	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.
Kenton.....	71,852	17.83	0	0	0	0	0	0	0	0	0	0
Lima.....	211,229	52.41	211,229	63.78	0	0	0	0	0	0	0	0
Cridersville.....	2,973	.74	2,973	.90	2,973	2.48	0	0	0	0	0	0
Wapakoneta.....	50,374	12.49	50,374	15.20	50,374	41.99	50,374	43.06	0	0	0	0
St. Marys.....	38,808	9.63	38,808	11.72	38,803	32.35	38,808	33.17	38,808	58.25	0	0
Celina.....	27,815	6.90	27,815	8.40	27,815	23.18	27,815	23.77	27,818	41.75	27,815	100.00
Totals.....	403,051	100.00	331,199	100.00	119,970	100.00	116,997	100.00	66,623	100.00	27,815	100.00

ELH 6-20-28

[fol. 715] COMPANY EXHIBIT No. 2

Formal Proceeding No. 5137

Appeal of The West Ohio Gas Company from Ordinance No. 2675, City of Lima, Ohio. Filed in conformity by stipulation in the record of the hearing of July 12th, 1928. Being copy of the Finding and Order of the Commission fixing valuation of the property of The West Ohio Gas Company as of January 1, 1925; and Report of U. G. I. Contracting Company of Present Value as of January 1, 1925—West Ohio Gas Company, Lima Metropolitan Territory

Filed Nov. 21, 1929. The Public Utilities Commission of Ohio.

[fol. 716] BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Advanced Utility Rate Proceeding No. 179

In the Matter of the West Ohio Gas Company's Proposed Schedule for Gas Service, Filed to Become Effective January 1, 1925

This matter comes on for consideration in pursuance of an inquiry and investigation, which was inaugurated upon the protest of the City of Lima, Ohio, into the reasonableness of the proposed schedule of rates and charges for manufactured gas service which the respondent the West Ohio Gas Company, published and filed to become effective January 1, 1925. Upon this protest, the use of the rates and charges set forth in such schedule was suspended for the statutory period of 120 days from the date of the filing with the Commission.

The hearings have been extended and included a further hearing granted upon application of the City of Lima, which represented that it had discovered additional testimony which would show, or tend to show, that a new and adequate supply of natural gas (available for distribution in the City of Lima) had been developed at and about Coldwater, Ohio.

The proposed schedule was published by the respondent company to supersede its schedule of rates and charges for

the furnishing of natural gas service because of its alleged inability to secure such supply of that product as would insure an adequate and reasonable fuel service to the people of Lima. This company purchases all gas which it distributes and each year has developed a gas shortage in this city. Contemporaneously with the publication of this sched- [fol. 717] ule the respondent company filed with the Commission an application for authority to discontinue the furnishing of natural gas service in Lima and substitute therefor a manufactured gas service. In this matter, after a hearing jointly with this proceeding, an order was today entered granting the relief prayed for.

At the expiration of the suspension period provided for — law, the respondent company filed a surety bond in the sum of $45,000.00 to enable it to collect the proposed rates and charges.

Due to the importance of this matter, the Commission finds that it will be necessary that a valuation of the property of the respondent company, used and useful for the furnishing of manufactured gas service in the City of Lima, Ohio, as of January 1, 1925, be determined. The inventory of its property submitted by the company, in conjunction with the inventory which we prepared in appraising the natural gas property at Lima in 1921 will be taken as the basis for such valuation, the City offering no objections to these inventories.

A consideration of this matter, of necessity, will occasion comparison with the appraisal of the Lima gas property which we made as of September 1, 1921. The valuation summarized:

Reproduction Value	$1,319,529.82
Depreciation	375,982.51
Present Value	$943,547.31

Comparison of the valuation figures which we will use here with the 1921 appraisal will not be wholly proper for the reason that the present inquiry embraces not only the natural gas property involved in the earlier proper proceeding but, also, the artificial gas plant and system which was [fol. 718] then held in the name of an independent corporation.

At the hearing the company offered this testimony of engineers to the effect that the fair value of its Lima, Ohio, property is,

Reproduction value	$3,545,962.00
Depreciation	422,504.00
	$3.123,458.00

as of the date of the inquiry herein. These figures are reached by applying in every instance higher prices than we shall adopt.

Coming now to the placing of valuations upon the various classes of property of the respondent company, the Commission has accepted the findings of the Business Property Appraisal Committee of the Lima Realtor's Association of Lima, Ohio, as to the value of the company's land, which was presented by the respondent, and which was arrived at by comparisons with the value of contiguous parcels of land and land of similar character as to use and location, as provided by Sec. 499-9B, G. C. of Ohio. The City made no objection to this evidence.

The Commission has been unable to find from the records of the company, or any other source, the original cost of the company's land.

Figures for the valuation of the company's buildings were obtained from local contractors at Lima and, as they are uncontroverted, they will be adopted by the Commission for the purpose of this appraisal.

Coming now to the placing of values upon the physical property, other than land, buildings and right-of-way, the Commission finds not only a wide divergence between the figures of its engineers and the engineers of the company, but the values appearing in the 1921 appraisal of the natural gas property and those used here. We have previously referred to the first of these differences and will hereafter confine our discussion to the second.

[fol. 719] Taking up those items of property which appear in this and the 1921 appraisal, we find, first, that a gas holder was carried in 1921 at fifty percent of $120,125.00. In this appraisal this particular holder is carried at $105,684.00 as it is all involved in this inquiry.

On the subject of meters: In the 1921 appraisal 10,618 meters were carried at $139,540.74, a depreciation of 30%

having been applied. Here, a total of 12,911 meters, with a present condition of 85%, are carried at $153,436.00. In this interim the company has overhauled 4,521 meters and added 2,607 new meters and we find that an average depreciation of 15% is proper at this time upon this equipment.

Service connections: In the 1921 appraisal this item was carried at $51,598, with an accrued depreciation of 47%, 2,500 services have been taken up and renewed; 1,559 new services have been installed and there are added 3,000 artificial gas services. The addition of new services, and the renewal of the old services has reduced the accrued depreciation to an average of 25%.

Transmission main: This item appears in the 1921 appraisal at $287,231.76, present value. Having discovered that this main is constructed of genuine wrought iron pipe, and not steel pipe as was assumed in the preparation of the earlier appraisal, we are forced to ascribe the actual value to the actual facility, the cost of which is approximately 50% higher. The superior character of the material accounts for the present condition.

Distribution System: The same factor accounts for the greater part of the increased value of the distribution system; the earlier appraisal having been prepared on the assumption that this part of the company's plant was of [fol. 720] steel pipes, whereas the greater part is genuine wrought iron pipe. In addition, there is an increase in this item by reason of the inclusion in this appraisal of the artificial gas system.

Coming now to the placing of values for the so-called "Overheads," the Commission feels that this is probably the most difficult problem in making a valuation. Individual engineers differ very widely as to the proper items to be made a part of these allowances, and as to the allowances to be made for the items. In the absence of any direct testimony or evidence as to the amounts paid on these accounts, we will make an allowance of 7%. The allowances for working capital and for materials and supplies have been computed on the basis of the company's actual operating experience.

The Commission, therefore, finds that the following is the valuation to be placed upon the property of the West Ohio Gas Company, used and useful for the conduct of its business in the City of Lima, Ohio, as of January 1, 1925:

Classification	Reproduction value	Depreciation %	Depreciation Amount	Present value
Manufacturing Plant:				
Land	$110,600.00	..	.....	110,600.00
Buildings	67,465.00	15	10,120.00	57,345.00
Apparatus	178,385.00	15	26,758.00	151,627.00
Yard structures	233,302.00	20	46,650.00	186,642.00
Miscellaneous	44,563.00	20	8,912.00	35,651.00
Transmission main 70% of $849,872.00	594,910.00	30	178,473.00	416,437.00
Distribution system—regulator stations:				
Land	2,100.00	..	.....	2,100.00
Buildings	1,841.00	20	368.00	1,473.00
Apparatus	4,391.00	10	439.00	3,952.00
Main, etc	879,090.00	20	175,818.00	703,272.00
Services	168,055.00	25	42,014.00	126,041.00
Meters with connections	180,512.00	15	27,076.00	153,436.00
Arc lamps	6,503.00	15	975.00	5,528.00
Meter shop, garage, storeroom and distribution tools	4,090.00	20	818.00	3,272.00
Transportation equipment	7,008.00	20	1,401.00	5,607.00
Commerical and new business, Main Office furniture and fixtures	10,659.00	10	1,066.00	9,593.00
Total physical property	$2,493,474.00	..	$520,898.00	$1,972.576.00
[fol. 721]				
Organization and Interest, Engineering, Law Expenditures, Taxes and General Expenses during Construction, and Contingencies and Omissions, 7%	174,543.00		36,463.00	138,080.00
Working Capital	55,870.00		.....	55,870.00
Materials and Supplies	38,522.00		.....	38,522.00
	$2,762,409.00		$557,361.00	$2,205,048.00

The Commission further finds:

That, while all are available gas produced in the said Coldwater field has been contracted for sale to interests other than those which own and operate the gas distribution system in the City of Lima, Ohio, such available gas and all further production which may be reasonably expected to develop in this field is and will be wholly inadequate to meet the demand of the gas consuming public in the City of Lima, Ohio;

That, based upon the actual experience of the company for the year 1924, the probable gross revenue of the company for the period of one year upon the rates and charges set forth in said proposed new schedule will be the sum of $711,500.00;

That the reasonable cost of furnishing such service for a period of one year (including an annual depreciation charge of $53,639.00, 3% of the present value of the depreciable property, which the Commission hereby finds and declares to be reasonable, an annual appropriation of $23,416.00 for the amortization of the respondent's pipe line, and its probable taxes for the year of $40,570.00) will be the sum of $539,481.00, which, deducted from the probable revenues aforesaid, will leave available for return upon the property investment a balance of $172,019.00;

That said sum, $172,019.00 is equivalent to 7.8 percentum of the present value ($2,205,048.00) of respondent's said property, aforesaid, and

That an annual earning of 7.8 percentum is not unjust, unreasonable, excessive nor more than the respondent is entitled to earn upon its property dedicated to and used and useful for the convenience of the public.

The Commission, therefore, further finds that the re-
[fol. 722] spondent has sustained the burden of proof imposed by law and shown that said proposed schedule of rates and charges are not unjust nor unreasonable, and that the protests, heretofore filed herein, are not well taken.

It is, therefore, ordered, that the protests heretofore filed herein be, and hereby the same are dismissed; that said proposed schedule, designated P. U. C. O. No. 1, be, and hereby it is permitted to become effective, and that this proceeding be, and hereby it is discontinued.

The Public Utilities Commission of Ohio, Charles C. Marshall, Chairman; George T. Poor, Frank B. Maullar, Commissioners.

Dated at Columbus, Ohio, this 25th day of April, 1925.

[fol. 723] The U. G. I. Contracting Company,

Philadelphia, Penn.

January 30, 1925.

Mr. E. R. Curtin, President, West Ohio Gas Company, Lima, Ohio.

Dear Sir:

Pursuant to your instructions, our Appraisal Division has prepared this Report to show the "Present Value" of

the property owned by the West Ohio Gas Company, used and useful in receiving, manufacturing and supplying gas to customers in the "Lima Metropolitan Territory."

The "Present Value" shown in this report is the result of applying factors to the "Reproduction Cost New," including engineering and construction overheads, as found in the January 1st, 1925, inventory and appraisal.

The factors are based on an inspection of the visible property and an analysis of the company's operating records to determine the present condition of the property involved.

This does not indicate that the property is not in 100% operating condition and that the present customers are not receiving satisfactory service.

It is an established fact that utility properties must be maintained in good operating condition in order to insure [fol. 724] adequate service to customers at all times.

Our inspection of the properties showed that the buildings, apparatus, machinery and yard structures were of approved and modern design and construction, and maintained in excellent condition.

During the city's recent sewer and paving campaigns, the gas company thoroughly inspected and repaired all mains and services located in streets affected. The gas company has also made a recent inspection of the other portions of its distribution system in the "Lima Metropolitan Territory" and made all necessary repairs to these mains and services, in order to reduce the amount of unaccounted-for gas.

Gas regulators must be in one-hundred percent operating condition at all times in order to maintain proper distribution pressures.

All meter provers are inspected, approved and sealed by an authorized representative of The Public Utilities Commission, and customers' meters must be tested with these meters provers and maintained in one-hundred percent operating condition in compliances with instructions issued by the Commission.

The results of our inspection and analysis of the company's record leads us to believe that the property as a whole is in one hundred percent operating condition.

The difference between the "Reproduction Cost New" as shown in the January 1, 1925, inventory and appraisal and the "Present Value" as shown in this report represents our

estimate of what the company could economically spend to bring its property up to 100% new condition.

We also think that this difference should be considered as deferred maintenance.

[fol. 725] The value of working capital, materials and supplies and going value to not change when used for the purpose of this report, therefore, the amounts shown in the January 1, 1925, inventory and appraisal have been used in this report.

Our claim for Investment Ba-kers' services, made in this report, is the same as in January 1, 1925, inventory and appraisal but the amount is based on the Present Value," and ..... $283,951.00 has been included to cover this item.

Respectfully submitted, The U. G. I. Contracting Company, E. L. Heyser, Appraisal Engineer.

[fol. 726] West Ohio Gas Company

Final Summary

Reproduction Cost as of January 1st, 1925, less Deferred Maintenance

Manufacturing Plant:		
Land	$131,614	
Buildings	70,056	
Apparatus	189,445	
Yard Structures	236,755	
Miscellaneous	44,697	
		$672,567
Transmission Main		561,058
Distribution Systems:		
Regulator Stations		
Land	2,499	
Buildings	1,868	
Apparatus	4,923	
Mains, Etc.	881,903	
Services	159,989	
Meters and Connections	188,022	
Arc Lamps	6,191	
		1,245,395

Meter Shop, Garage, Storerooms, and Distribution Tools	3,650
Transportation Equipment	6,622
Commercial and New Business:	
Main Office Furniture and Fixtures	10,073
Total, Physical Property	$2,499,365
Working Capital	81,620
Materials and Supplies	38,522
Going Value	220,000
Sub-total	$2,839,507
Investment Banker's Services	283,951
Total	$3,123,458

PAGE 18 OF COMPANY EXHIBIT NO. 7

West Ohio Gas Company, Lima, Ohio

Table 1

Method of determining percentages for allocating to each District the proper proportion of the March 31, 1928 "Reproduction Cost" of the transmission main, based on the amount of gas purchased during period from April 1, 1927, to March 31, 1928.

	Pipe Line, Point East of Kenton to Kenton		Pipe Line, Kenton to Lima		Pipe Line, Lima to Cridersville		Pipe Line, Cridersville to Wapakoneta		Pipe Line, Wapakoneta to St. Mary's		Pipe Line, St. Marys to Celina	
District	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.	Gas purch'd M. Cu.Ft.	Per cent assignable to each location based on relation to Total Gas Purch.
Kenton.....	71,852	17.83	0	0	0	0	0	0	0	0	0	0
Lima.....	211,229	52.41	211,229	63.78	0	0	0	0	0	0	0	0
Cridersville.....	2,973	.74	2,973	.90	2,973	2.48	0	0	0	0	0	0
Wapakoneta.....	50,374	12.49	50,374	15.20	50,374	41.99	50,374	43.06	0	0	0	0
St. Marys.....	38,808	9.63	38,808	11.72	38,808	32.35	38,808	33.17	38,808	58.25	0	0
Celina.....	27,815	6.90	27,815	8.40	27,815	23.18	27,815	23.77	27,818	41.75	27,815	100.00
Totals.....	403,051	100.00	331,199	100.00	199,970	100.00	116,997	100.00	66,623	100.00	27,815	100.00

ELH 6-20-28

[fol. 728] Filed Apr. 2, 1930. The Publ. Utiltities Commission of Ohio.

COMPANY EXHIBIT D

No. 5137

The Logan Gas Company

99 North Front Street, Columbus, Ohio

November 13, 1928.

Emmett R. Curtin, President, The West Ohio Gas Company, 112 West Market Street, Lima, Ohio,

DEAR MR. CURTIN:

Acknowledging your letter of November 6th in which you inquire whether The Logan Gas Company can supply The West Ohio Gas Company with natural gas for distribution in the towns on its system, we regret to adivse that our company is not in position to serve you. The present demands upon us for gas service by the existing consumers in the one hundred and more communities we supply preclude our assuming additional obligations, particularly of such magnitude as your requirements call for.

Thanking you for the proffered patronage and regretting our inability to favor you, we remain.

Yours very truly, The Logan Gas Company, by K. C. Krick, Vice-President.

KCK-P.

[fol. 729] Filed Apr. 2, 1930. The Publ. Utilities Commission of Ohio.

November 6, 1928.

Mr. R. W. Gallagher, President, The East Ohio Gas Company, Cleveland Ohio.

DEAR MR. GALLAGHER:

Our Natural Gas contract we have been operating under for the past three years, at first with The Ohio Public Service Company and since spring with The Ohio Fuel Gas Company, will expire on next January 1st.

Now, we are owners of a pipe line one-half of which is 12" and one-half 10" which extends forty-five (45) miles

east of Lima to a point in Marseilles Township, Wyandot County, Ohio, from which point on down to Mansfield and points further east we connect with an 8″ line now owned by the Ohio Fuel Gas Company.

We are desirous of procuring a supply of Natural gas for the towns on our system, and I was wondering if your company is in a position to be interested in supplying us with the amount of natural gas we will have market for and at what price.

I would like to have you write me as soon as you can whether or not you are interested in the matter.

Yours very truly, —— ——.

ERC:EBF.

[fol. 730] Filed Apr. 2, 1930. The Publ. Utilities Commission of Ohio.

COMPANY EXHIBIT E

No. 5137

The East Ohio Gas Company

East Ohio Gas Building,

1405 E. Sixth St., Cleveland

November 9, 1928.

Mr. Emmett R. Curtin, Pres., West Ohio Gas Company, 112 West Market Street, Lima, Ohio.

DEAR MR. CURTIN:

Replying to your letter of November sixth, asking if our Company would be willing to furnish gas for your towns at the end of the present contract period; namely, January 1, 1929, we are sorry to advise that we have no surplus gas and for this reason are not in position to discuss the matter with you. For a number of years past our own properties have required all the gas that we have been able to purchase and produce. In fact, we would be glad if we could find an additional source of supply, especially during the winter months.

Sorry we are not in position to help you.

Yours very truly, R. W. Gillagher.

[fol. 731]

COMPANY EXHIBIT No. 102

Filed Jan. 21, 1932. The Public Utilities Commission of Ohio

No. 5137

West Ohio Gas Company—All Districts

Rate of Return on Combined Valuations Fixed by Public Utilities Commission plus Net Additions to Capital (Valuations 1922–1924 Not Available)

	1922(x)	1923(x)	1924(x)	1925	1926	1927	1928	1929	1930
Gross Revenue from Sales	568,310.02	676,600.90	673,374.96	668,374.26	704,718.38	723,116.88	739,854.77	744,241.55	721,340.07
Total Expense, including Federal Income Tax but excluding Amortization of Transmission Line	(xx)554,625.68	573,027.49	533,343.11	540,275.01	581,801.67	585,439.96	559,395.98	586,468.72	556,610.59
Net Return	$13,684.34	103,573.41	140,031.85	128,099.25	122,916.71	137,676.92	180,458.79	157,772.83	164,729.48
Combined Valuations fixed by Public Utilities Comm.	.....	.....	.....	3,991,556.92	3,090,187.80	3,143,038.05	3,167,779.31	3,191,999.02	3,275,019.90
Net Additions to Capital	.....	.....	.....	98,630.88	52,850.25	24,741.26	24,219.71	83,020.88	299,858.84
P. U. Comm. Combined Valuations plus Net Additions	.....	.....	.....	3,090,187.80	3,143,038.05	3,167,779.31	3,191,999.02	3,275,019.90	3,574,878.74
% of Net Return to Valuations				4.14	3.91	4.35	5.65	4.82	4.61

(x) Figures for years 1922 and 1923 represent total of old companies. Figure for 1924 is combination of eleven months operations of old companies with the month of December for the West Ohio Gas Co.

(xx) Operating expenses for the years 1925 to 1930 inclusive. Allowances for depreciation as set forth in the various P. U. Co. orders affecting each district. Expenses for the above years also include proportionate amounts of cumulated rate expenses.

FLP:AL/1-20-32.

[fol. 732]

COMPANY EXHIBIT No. 103

Filed Jan. 21, 1932. The Public Utilities Commission of Ohio

No. 5137

West Ohio Gas Company, Lima District

Rate of Return on Valuations Fixed by Public Utilities Commission plus Net Additions to Capital, Period 1922 to 1930, inc.

	1922	1923	1924	1925	1926	1927	1928	1929	1930
Gross Revenue from Sales	$422,641.52	492,012.50	543,797.70	502,354.80	492,597.93	492,945.07	511,105.08	511,853.64	495,283.95
Total Expense, including Federal Income Tax, but excluding Amortization of Transmission Line	400,485.83	428,046.73	479,609.51	348,482.70	372,922.47	381,565.47	368,142.24*	386,735.68*	369,535.71*
Net Return	22,155.69	63,965.77	64,188.19	153,872.10	119,675.46	111,379.60	142,962.84	125,117.96	125,748.24
Valuation Fixed by P. U. C.	943,547.00	943,547.00	943,547.00	2,205,048.00	2,280,696.54	2,327,251.38	2,346,766.01	2,364,423.59	2,415,246.52
Net Additions to Capital	.....	.....	.....	75,648.54	46,554.84	19,514.63	17,657.58	50,822.93	28,125.34
P. U. Comm. Value plus Net Additions	943,547.00	943,547.00	943,547.00	2,280,696.54	2,327,251.38	2,346,766.01	2,364,423.59	2,415,246.52	2,443,371.86
% of Net Return to Valuation	2.35	6.78	6.80	6.75	5.14	4.75	6.05	5.18	5.15

Net Additions to Capital for years 1922–1923–1924 not available.
* Includes 1/5 of $24,868.03, cost of Lima Rate Case.

FLP:AL/1-20-32

[fol. 732a] COMPANY EXHIBIT No. 104

West Ohio Gas Company, Lima District

Operating Expenses Years 1927 to 1931 Inc.

[fol. 733] Filed Jun. 8, 1932. The Public Utilities Commission of Ohio.

West Ohio Gas Company, Lima District

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[fol. 734] West Ohio Gas Company, Lima District

1

Revenue and Expense Statement for Five 12-Month Periods Ending December 31, Years 1927 to 1931, Inclusive

	1927	1928	1929	1930	1931
Operating Expenses—					
Gas Produced and Purchased	$174,962.38	$151,291.37	$160,430.27	$156,249.41	$146,063.48
Distribution Expenses	43,071.37	42,983.21	42,927.46	38,244.04	41,734.44
Commercial Expenses	22,749.95	22,317.48	22,339.58	20,832.90	19,468.67
New Business Expenses	7,445.34	10,645.94	13,810.91	13,845.39	11,152.38
General and Miscellaneous Expenses	39,288.92	44,019.75	53,078.12	51,308.82	45,805.88
Indirect Charges to Construction	2,698.34*	1,868.12*	2,652.13*	8,624.15*	2,477.87*
Retirement Allowance	53,639.00	53,639.00	53,639.00	53,639.00	53,639.00
Allowance for Amortization of Pipe Line	23,416.00	23,416.00	23,416.00	23,416.00	23,416.00
Real and Personal Property Taxes	24,361.32	23,878.04	24,899.29	23,738.16	20,460.00
State of Ohio, Excise Tax	7,484.69	7,192.34	7,381.69	7,452.86	6,999.33
Tax for Maintenance of Public Utilities Commission	292.72	291.81	281.67	271.80	289.25
Federal Income Tax	7,400.48	10,371.58	8,867.30	7,061.73	8,387.46
Uncollectible Accounts	2,877.29	2,830.02	2,753.43	2,286.55	2,099.47
Total Cost of Operation	$404,290.60	$391,008.42	$411,172.59	$389,722.51	$377,037.49
Gross Revenue from Operation	492,945.07	511,105.08	511,853.64	491,255.46	457,775.74
Net Applicable to Return on Valuation	$88,654.47	$120,096.66	$100,681.05	$101,532.95	$80,738.25

* Red in copy.

[fol. 735] West Ohio Gas Company, Lima District

2

Revenue and Expense Statement for the Year Ended December 31, 1927

	As shown on records of the company	Adjustments	Corrected total
Revenue from Sales—			
Residence Service	$441,861.29	.....	$441,861.29
House Heating Service	2,240.33	.....	2,240.33
Commercial Service	36,776.32	.....	36,776.32
Industrial Service	8,932.88	.....	8,932.88
Miscellaneous Municipal Sales	3,134.25	.....	3,134.25
Gross Revenue from Sale of Gas	$492,945.07	.....	$492,945.07
Operating Expenses—			
Cost of Gas Send Out	$174,962.36	.....	$174,962.36
Distribution Expenses	43,071.37	.....	43,071.37
Commercial Expenses	22,749.95	.....	22,749.95
New Business Expenses	7,445.34	.....	7,445.34
General and Miscellaneous Expenses	39,288.92	.....	39,288.92
Indirect Charges for Construction (Cr.)	2,698.84*	.....	2,698.84*
Retirement Allowance	53,639.00	.....	53,639.00
Amortization of Pipe Line	(1)11,708.00	$11,708.00	23,416.00
Real and Personal Property Taxes	24,361.32	.....	24,361.32
State of Ohio Excise Tax	7,484.69	.....	7,484.69
Tax for Maintenance of Public Utilities Comm	292.72	.....	292.72
Federal Income Tax	7,400.48	.....	7,400.48
Uncollectible Accounts	2,877.29	.....	2,877.29
Total Operating Expenses	$392,582.60	$11,708.00	$404,290.60
Gross Operating Income	$100,362.47	$11,708.00*	$88,654.47
Gas Sold—			
Metered Domestic Sales—MCF	328,310,100	.....	328,310,100
Metered Commercial Sales—MCF	38,613,500	.....	38,613,500
Metered Industrial Sales—MCF	9,941,200	.....	9,941,200
Metered House Heating Sales—MCF	2,698,800	.....	2,698,800
Miscellaneous Municipal Sales—MCF	3,190,400	.....	3,190,400
Total Gas Sold—MCF	382,754,000	.....	382,754,000

NOTES AND COMMENTS—

(1) Addition of $11,708.00 to Amortization of Pipe Line made to give effect to total amortization authorized by Public Utilities Commission under date of April 25, 1925—Case No. 179.

*Red in copy.

[fol. 736] West Ohio Gas Company, Lima District

3

Revenue and Expense Statement for the Year ended December 31, 1928

	As shown on records of the company	Adjustments	Corrected total
Revenue from Sales—			
Residence Service	$442,287.57	.....	$442,287.57
House Heating Service	4,304.13	.....	4,304.13
Commercial Service	39,693.43	.....	39,693.43
Industrial Service	22,372.14	.....	22,372.14
Sales to Other Gas Corporations	.....	.....	.....
Miscellaneous Municipal Sales	2,447.81	.....	2,447.81
Gross Revenue from Gas Sales	$511,105.08	.....	$511,105.08
Operating Expenses—			
Cost of Gas Send Out	$151,291.37	.....	$151,291.37
Distribution Expenses	42,983.21	.....	42,983.21
Commercial Expenses	22,317.48	.....	22,317.48
New Business Expense	10,645.94	.....	10,645.94
General and Miscellaneous Expenses	(1)38,988.36	5,031.39	44,019.75
Indirect Charges to Construction (Cr.)	1,868.12*	.....	1,868.12*
Retirement Allowance	53,639.00	.....	53,639.00
Amortization of Pipe Line	(2)11,708.00	11,708.00	23,416.00
Real and Personal Property Taxes	23,878.04	.....	23,878.04
State of Ohio Excise Tax	7,192.34	.....	7,192.34
Tax for Maintenance of Ohio Public Utilities Comm	291.81	.....	291.81
Federal Income Tax	10,371.58	.....	10,371.58
Uncollectible Accounts	2,830.02	.....	2,830.02
Total Operating Expenses	$374,269.03	$16,739.39	$391,008.42
Gross Operating Income	$136,836.05	$16,739.39*	$120,096.66
Sales of Gas in Cubic Feet—			
Residence Service	328,418,400	.....	328,418,400
House Heating Service	5,705,400	.....	5,706,400
Commercial Service	40,753,900	.....	40,753,900
Industrial Service	26,934,600	.....	26,934,600
Sales to Other Gas Corporations	.....	.....	.....
Miscellaneous Municipal Sales	2,376,600	.....	2,376,600
Total Sales	404,189,900	.....	404,189,900

* Red in copy.

NOTES AND COMMENTS—

(1) Addition of $5,031.39 made to General and Miscellaneous Expense to cover Amortization of Rate Case Expense as shown on Schedule #13.

(2) Addition of $11,708.00 to Amortization of Pipe Line made to give effect to total Amortization authorized by the Public Utilities Commission under date of April 25, 1925—Case 179.

[fol. 737] West Ohio Gas Company, Lima District

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Revenue and Expense Statement for the Year ended December 31, 1929

	As shown on records of the Company	Adjustments	Corrected total
Revenue from Sales—			
Residence Service	$437,836.96	.....	$437,836.96
House Heating Service	6,527.39	.....	6,527.39
Commercial Service	42,596.49	.....	42,596.49
Industrial Service	22,676.36	.....	22,676.36
Sales to Other Gas Corporations	.....	.....	.....
Miscellaneous Municipal Sales	2,216.44	.....	2,216.44
Gross Revenue from Gas Sales	$511,853.64	.....	$511,853.64
Operating Expenses—			
Cost of Gas Send Out	160,430.27	.....	160,430.27
Distribution Expenses	42,927.46	.....	42,927.46
Commercial Expenses	22,339.58	.....	22,339.58
New Business Expenses	13,810.91	.....	13,810.91
General and Miscellaneous Expenses	(1)46,369.60	6,708.52	53,078.12
Indirect Charges to Construction (Cr.)	2,652.13*	.....	2,652.13*
Retirement Allowance	53,639.00	.....	53,639.00
Amortization of Pipe Line	(2)11,708.00	11,708.00	23,416.00
Real and Personal Property Taxes	24,899.29	.....	24,899.29
State of Ohio Excise Tax	7,381.69	.....	7,381.69
Tax for Maintenance of Ohio Public Utilities Comm	281.67	.....	281.67
Federal Income Tax	8,867.30	.....	8,867.30
Uncollectible Accounts	2,753.43	.....	2,753.43
Total Operating Expenses	$392,756.07	$18,416.52	$411,172.59
Gross Operating Income	$119,097.57	$18,416.52*	$100,681.05
Sales of Gas in Cubic Feet—			
Residence Service	324,694,500	.....	324,694,500
House Heating Service	9,086,000	.....	9,086,000
Commercial Service	44,035,100	.....	44,035,100
Industrial Service	28,035,400	.....	28,035,400
Sales to Other Gas Corporations	.....	.....	.....
Miscellaneous Municipal Sales	2,236,500	.....	2,236,500
Total Sales	408,087,500	.....	408,087,500

* Red in copy.

NOTES AND COMMENTS—

(1) Addition of $6,708.52 made to General and Miscellaneous Expense to cover Amortization of Rate Case Expense as shown on Schedule #13.

(2) Addition of $11,708.00 to Amortization of Pipe Line made to give effect to total amortization authorized by the Public Utilities Commission under date of April 25, 1925—Case No. 179.

[fol. 738] West Ohio Gas Company, Lima District

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Revenue and Expense Statement for the Year Ended December 31, 1930

	As shown by records of the Company	Adjustments	Corrected total
Revenue from Sales—			
Residence Service	$414,386.73	.....	$414,386.73
House Heating Service	9,251.64	.....	9,251.64
Commercial Service	40,478.77	.....	40,478.77
Industrial Service	21,052.11	.....	21,052.11
Sales to Other Gas Corporations	(1) 4,028.49	4,028.49*	.....
Miscellaneous Municipal Sales	1,487.67	.....	1,487.67
Forfeited Discounts	4,598.54	.....	4,598.54
Gross Revenue from Sale of Gas	$495,283.95	$4,028.49*	$491,255.46
Operating Expenses—			
Cost of Gas Send Out	(2)$159,058.29	$2,808.88*	$156,249.41
Distribution Expenses	(3) 38,402.02	157.98*	38,244.04
Commercial Expenses	20,832.90	.....	20,832.90
New Business Expenses	13,845.39	.....	13,845.39
General Miscellaneous Expenses	(4)46,597.56	4,711.26	51,308.82
Indirect Charges for Construction (Cr.)	8,624.15*	.....	8,624.15*
Retirement Allowance	53,639.00	.....	53,639.00
Amortization of Pipe Line	(5)11,708.00	11,708.00	23,416.00
Real and Personal Property Taxes	23,738.16	.....	23,738.16
State of Ohio Excise Tax	7,452.86	.....	7,452.86
Tax for Maintenance of Public Utilities Comm	271.80	.....	271.80
Federal Income Tax	7,061.73	.....	7,061.73
Uncollectible Accounts	2,286.55	.....	2,286.55
Total Operating Expenses	$376,270.11	$ 13,452.40	$389,722.51
Gross Operating Income	$119,013.84	$17,480.89*	$101,532.95
Sales of Gas in Cubic Feet—			
Residence Service	306,561,000	.....	306,561,000
House Heating Service	12,489,200	.....	12,489,200
Commercial Service	41,476,600	.....	41,476,600
Industrial Service	26,687,200	.....	26,687,200
Sales to Other Gas Corporations	7,899,000	7,899,000*	.....
Miscellaneous Municipal Sales	1,357,300	.....	1,357,300
Total Sales	396,470,300	$7,899,000*	388,571,300

* Red in copy.

NOTES AND COMMENTS—

(1) Revenue amounting to $4,028.49 resulting from the sale of 7,899,000 cubic feet of gas to the Delphos Gas Company prior to acquisition is deducted as not being applicable to Lima District operations.

(2) Deduction of $2,808.88 made to Lima District Holder Cost to compensate for gas transferred to Delphos Gas Company during the last three months of year 1930 prior to acquisition of the Delphos Gas Company. Gas transferred to Delphos subsequent to the acquisition of the Delphos Gas Company and gas transferred to towns north of Lima during the last three months of year 1930 credited to Lima District costs through account "Gas Transferred," as shown on Schedule No. 7, "Production Expenses."

(3) Deduction of $157.98 made to Lima District Distribution Expenses to compensate Lima District for expenses of pumping gas to Delphos during the last three months of year 1930. Credit for pumping charges incurred in supplying Delphos subsequent to acquisition of the company and towns north of Lima made through account "Duplicate Distribution Charges, (Cr.)" as shown on Schedule No. 9, "Distribution Expenses."

(4) Addition of $4,711.26 made to General and Miscellaneous Expenses to cover Amortization of Rate Case Expense as shown on Schedule No. 13.

(5) Addition of $11,708.00 to Amortization of Pipe Line made to give effect to total amortization authorized by the Public Utilities Commission of Ohio under date of April 25, 1925—Case No. 179.

[fol. 739] West Ohio Gas Company. Lima District

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Revenue and Expense Statement for the Year Ended December 31, 1931

Revenue from Sales—	As shown on records of the Company	Adjustments	Corrected total
Residence Service	$386,005.99	.....	$386,005.99
House Heating Service	7,607.09	.....	7,607.09
Commercial Service	35,414.53	.....	35,414.53
Industrial Service	22,794.45	.....	22,794.45
Sales to Other Gas Corporations	(1)13,247.15	13,247.15*	.....
Miscellaneous Municipal Sales	1,740.57	.....	1,740.57
Forfeited Discounts	4,213.11	.....	4,213.11
Gross Revenue from Sale of Gas	$471,022.89	$13,247.15*	$457,775.74
Operating Expenses—			
Cost of Gas Send Out	(2)$155,100.11	9,036.63*	$146,063.48
Distribution Expenses	(3)42,253.94	519.50*	41,734.44
Commercial Expenses	19,468.67	.....	19,468.67
New Business Expenses	11,152.38	.....	11,152.38
General and Miscellaneous Expenses	(4)39,097.36	6,708.52	45,805.88
Indirect Charges for Construction (Cr.)	2,477.87*	.....	2,477.87*
Retirement Allowance	(5)32,673.50	20,965.50	53,639.00
Amortization of Pipe Line	(6).....	23,416.00	23,416.00
Real and Personal Property Taxes	20,460.00	.....	20,460.00
State of Ohio Excise Tax	6,999.33	.....	6,999.33
Tax for Maintenance of Ohio Public Utilities Comm	289.25	.....	289.25
Federal Income Tax	(7).....	8,387.46	8,387.46
Uncollectible Accounts	2,099.47	.....	2,099.47
Total Operating Expenses	$327,116.14	$49,921.35	$377,037.49
Gross Operating Income	$143,906.75	$63,168.50*	$80,738.25
Sales of Gas in Cubic Feet—			
Residence Service	281,741,700	.....	281,741,700
House Heating Service	10,409,000	.....	10,409,000
Commercial Service	35,754,900	.....	35,754,900
Industrial Service	32,320,000	.....	32,320,000
Sales to Other Gas Corporations	25,974,800	25,974,800*	.....
Miscellaneous Municipal Sales	1,655,600	.....	1,655,600
Total Sales	387,856,000	25,974,800*	361,881,200

* Red in copy.

NOTES AND COMMENTS—Next page.

NOTES AND COMMENTS—

(1) Revenue amounting to $13,247.15 resulting from the sale of 25,974,800 cubic feet of gas to the Delphos Gas Company prior to acquisition is deducted as not being applicable to Lima District operations.

(2) Deduction of $9,036.63 made to Lima District Holder Cost to compensate for gas transferred to Delphos Gas Company during the first 10 months of 1931 prior to acquisition of the Delphos Gas Company. Gas transferred to Delphos subsequent to the acquisition of the Delphos Gas Company and gas transferred to towns north of Lima during the year 1931 credited to Lima District costs through account "Gas Transferred," as shown on Schedule No. 7, "Production Expenses."

(3) Deduction of $519.50 made to Lima District Distribution Expenses to compensate Lima District for expense of pumping gas to Delphos during the first 10 months of 1931. Credit for pumping charges incurred in supplying Delphos subsequent to acquisition of the company and towns north of Lima made through account "Duplicate Distribution Charges (Cr.)" as shown on Schedule No. 9, "Distribution Expenses."

(4) Addition of $6,708.52 made to General and Miscellaneous Expenses to cover amortization of Rate Case Expenses as shown on Schedule No. 13.

(5) Addition of $20,965.50 to Retirement Allowance made to give effect to total Retirement Allowance authorized by the Public Utilities Comm. under date of April 25, 1925—Case No. 179.

(6) Addition of $23,416.00 to Amortization of Pipe Line made to give effect to total amortization authorized by the Public Utilities Comm. under date of April 25, 1925—Case No. 179.

(7) Addition of $8,387.46 made to cover Lima portion of Company liability under Federal Income Tax Law.

Detailed Statement Showing the Cost of Mixed Gas, Calendar Years 1927 to 1931, Inclusive

	1927	1928	1929	1930	1931
Water Gas Production Expenses—					
Works Superintendence	$2,134.25	$2,282.90	$2,089.15	$1,800.00	$1,800.00
Generator Labor	3,612.20	3,176.16	3,869.41	3,518.94	3,284.13
Purification Labor	224.73	185.46	88.00	201.58	96.88
Miscellaneous Works Labor	2,110.00	1,804.75	2,063.55	2,240.78	682.60
Generator Fuel	30,270.73	29,721.42	30,728.90	26,426.45	27,535.15
Water Gas Oil	318.23	436.03	.....	.....	.....
Steam Generation Apportionment Account	26,738.36	13,719.52	12,774.59	12,415.32	15,057.32
Miscellaneous Works Expense	1,133.65	1,265.25	1,608.43	1,033.13	1,064.14
Maintenance Works Stations and Structures	453.24	739.35	612.78	516.13	657.63
Maintenance Steam Engines	292.57	300.93	508.49	265.68	90.38
Maintenance Water Gas Sets	1,011.43	1,364.67	1,587.23	1,136.17	2,118.94
Maintenance Purification Apparatus	135.53	1,672.66	1,701.27	248.53	87.93
Maintenance Accessory Works Equipment	385.46	139.99	589.36	312.25	447.53
Maintenance Laboratory Equipment	128.95	48.08	57.68	62.46	33.08
Total Water Gas Production Expense	$68,949.33	$56,857.17	$58,278.84	$50,177.42	$52,955.71
Natural Gas Purchased	124,130.97	93,764.46	101,358.34	108,614.99	106,818.38
Gas Storage Expense	814.13	910.66	1,320.97	854.99	956.93
Maintenance of Holders	339.68	250.39	140.44	246.16	277.61
Gas Used by Company in Production (Cr.)	19,342.31*	476.01*	723.46*	345.50*	211.27*
Holder Stock Adjustment	70.56	15.30*	55.14	73.50*	84.70
Total Cost of Mixed Gas	$174,962.36	$151,291.37	$160,430.27	$159,474.56	$160,882.06
Gas Transferred—Credit	.....	.....	.....	416.27*	5,781.95*
	$174,962.36	$151,291.37	$160,430.27	$159,058.29	$155,100.11
Statistics—					
Water Gas Produced—Cubic Feet	228,339,000	257,317,000	267,541,000	250,984,000	268,254,000
Natural Gas—Purchased	225,695,910	170,480,839	184,287,886	197,481,845	194,215,300
Total Gas Produced and Purchased	454,034,910	427,797,839	451,828,886	448,465,845	462,469,300
Gas Used by Company	36,807,600	2,077,300	4,185,300	4,840,000	3,479,700
	417,227,310	425,720,539	447,643,586	443,625,845	458,989,600
Gas Transferred to Towns North and Delphos, subsequent to date of acquisition	.....	.....	.....	1,234,900	16,704,400
	417,227,310	425,720,539	447,643,586	442,390,945	442,185,200

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[fol. 741]

West Ohio Gas Company, Lima District

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Steam Generation Expenses Showing Apportionment, Calendar Years 1927 to 1931, Inclusive

Steam Generation Apportionment Account—	1927	1928	1929	1930	1931
Boiler Labor	$4,507.73	$6,396.00	$4,537.80	$5,302.99	$7,033.74
Miscellaneous Labor	.....	.....	.....	203.09	328.42
Fuel for Steam	21,944.38	7,867.10	8,407.04	8,028.16	9,579.42
Water for Steam	1,680.46	1,474.08	1,456.81	1,417.68	1,686.36
Lubricants	.....	.....	.....	33.13	.....
Miscellaneous Supplies and Expenses	.....	.....	.....	8.33	.....
Maintenance Boiler Plant Buildings	.....	.....	.....	.....	.....
Maintenance Furnaces and Boilers	782.93	770.67	1,097.50	965.96	1,129.39
Maintenance Boiler Apparatus	95.64	441.05	342.71	129.85	172.59
Maintenance Steam Accessories	1,088.85	227.51	408.20	123.06	151.00
Maintenance Miscellaneous Boiler Plant Equipment	.....	.....	.....	56.30	29.42
Total Steam Generation Expenses	$30,099.99	$17,176.41	$16,250.06	$16,268.55	$20,110.34
Apportionment of Steam Generation Expenses—					
Water Gas Production	$26,738.36	$13,719.52	$12,774.59	$12,415.32	$15,057.32
Gas Transmission and Distribution	2,555.00	2,562.00	2,555.00	2,998.24	4,096.09
Gas Storage	806.63	894.89	920.47	854.99	956.93
Total	$30,099.99	$17,176.41	$16,250.06	$16,268.55	$20,110.34

Detailed Statement of Distribution Expenses for the Calendar Years 1927 to 1931, Inclusive

Distribution Expenses—	1927	1928	1929	1930	1931
Superintendence	$3,383.25	$3,620.71	$3,813.67	$3,672.61	$4,095.02
Maps and Records	.....	.....	.....	851.13	2,186.57
Pumping	3,797.57	3,691.88	3,734.37	4,997.72	7,627.96
Operating Labor	1,258.12	1,966.33	1,316.62	1,805.10	2,034.76
Supplies and Expenses	1,145.35	1,005.01	846.19	1,075.93	888.03
Maintenance Installations—Customers' Premises	.....	.....	.....	1,811.29	2,452.25
Work on Customers' Premises	10,545.62	10,005.03	7,528.54	4,291.06	3,429.14
Removing and Resetting Customers' Regulators	.....	.....	.....	3.82	1.54
Changing Customers' Meters	7,470.88	6,152.71	5,234.52	991.31	844.69
Turn On and Turn Off Meter Expenses	.....	.....	.....	3,573.98	3,215.59
Total Operation	$27,600.79	$26,441.67	$22,473.91	$23,073.95	$26,775.55
Maintenance Mains	3,974.28	4,793.50	5,654.31	3,981.77	4,720.65
Maintenance Pumping Expenses	.....	.....	.....	63.55	71.03
Maintenance Vaults and Governors	.....	.....	.....	49.19	48.61
Maintenance Services	2,726.47	3,482.83	5,071.73	3,572.41	3,734.04
Maintenance Customers' Regulators	.....	.....	.....	35.62	53.53
Maintenance Customers' Meters	8,592.75	7,343.81	7,363.48	4,628.97	4,670.03
Maintenance Shop Buildings	47.39	49.42	16.80	96.03	188.84
Maintenance Distribution Implements and Accessories	310.17	242.24	224.72	168.76	185.05
Maintenance Gas Appliances	15.67	802.73	2,122.51	2,755.77	2,159.11
Total Maintenance	$15,666.73	$16,714.53	$20,453.55	$15,352.07	$15,830.89
Duplicate Distribution Charges (Cr.)	196.15*	172.99*	.....	24.00*	352.50*
Total Distribution Expenses	$43,071.37	$42,983.21	$42,927.46	$38,402.02	$42,253.94

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[fol. 743] West Ohio Gas Company, Lima District

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Detailed Statement of Commercial Expenses Charged to Lima District Operations for the Five Calendar Years, 1927 to 1931, Inclusive

Commercial Expenses—	1927	1928	1929	1930	1931
General Labor	$7,008.81	$6,554.18	$6,120.72	$5,069.93	$4,517.82
Bookkeeping	3,056.92	2,711.56	2,566.14	2,462.38	3,381.37
Contracts	360.00	360.00	360.00	360.00	360.00
Collecting	4,079.41	4,121.40	4,303.01	4,502.50	3,964.38
Meter Reading	3,870.02	4,099.34	4,479.90	4,904.93	4,488.03
Supplies and Expenses	4,374.79	4,471.00	4,509.81	3,533.16	2,757.07
Total Commercial Expenses	22,749.95	$22,317.48	$22,339.58	$20,832.90	$19,468.67

[fol. 744] West Ohio Gas Company, Lima District

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Detailed Statement of New Business Expenses Charged to Lima District Operations for the Five Calendar Years 1927 to 1931, Inclusive

New Business Expenses—	1927	1928	1929	1930	1931
New Business Management Salaries	$318.09	$274.19	$206.53	$1,054.13	$1,422.49
Piping and Appliances	.....	.....	.....	265.04	94.91
Demonstrations and Home Service	1,162.41	1,434.91	1,782.67	2,431.65	1,408.72
Advertising	1,505.54	1,920.33	2,350.85	1,583.52	1,109.43
Canvassing and Soliciting	3,783.95	6,446.10	8,430.99	8,348.59	6,450.65
New Business Supplies and Expenses	675.35	570.41	1,039.87	462.46	666.18
Total New Business Expense	7,445.34	$10,645.94	$13,810.91	$13,845.39	$11,152.38

[fol. 745] West Ohio Gas Company, Lima District

General and Miscellaneous Expenses Charged to Lima District Operations During the Five Years 1927–1931, Inclusive

General and Miscellaneous Expenses—	1927	1928	1929	1930	1931
Administrative Salaries	$9,953.46	$9,747.98	$10,741.61	$14,227.01	$11,561.04
Other General Office Salaries	7,810.40	7,968.33	8,051.35	7,045.10	6,402.97
General Office Supplies and Expenses	2,845.67	2,724.88	2,735.07	2,058.12	1,144.14
General Stationery and Printing	525.69	417.28	442.51	503.80	807.43
Operation of General Structures	.....	.....	.....	.....	912.80
Maintenance of General Structures	129.37	200.45	6.07	2.73	176.00
Maintenance of General Office Equipment	.....	.....	.....	259.53	20.44
Law Expense	556.66	479.02	849.80	1,693.07	3,964.17
Insurance	3,333.94	3,197.44	3,275.22	3,192.43	3,108.20
Stores Expense—Inventory Adjustments	231.11	232.01	410.21	426.46	.....
Undistributed Adjustments	363.67*	86.40*	1,317.65	580.99*	145.97
Contributions for Sustaining Chambers of Commerce	.....	.....	125.00	516.66	100.00
Annual Local Charitable Contributions	.....	1,118.60	1,010.00	1,500.00	1,266.00
Occasional Civic and Charitable Special Funds	612.50	.....	.....	52.14	10.00
Other Donations	.....	722.32	2,433.34	10.00	12.00
Chamber of Commerce Membership Dues	.....	68.69	519.59	268.86	321.55
National and State Utility Association Dues	.....	575.67	.....	755.20	410.29
Other Association Expenses	850.23	.....	917.24	.....	241.62
Miscellaneous General Expenses	5,483.07	3,236.30	4,350.84	2,358.88	1,303.03
Traveling Expenses Association	.....	.....	.....	221.84	181.24
General Publicity and Advertising	.....	1,067.29	1,601.63	1,200.77	802.31
Annual Reports and Stockholders Bulletins	.....	.....	.....	500.53	61.23
Consulting Engineers	.....	.....	.....	52.39	.....
Annual Audits	338.57	436.53	570.22	298.06	364.44
Regulatory Commission Expenses	1,880.88	470.05	.....	1,997.26	.....
Medical Expenses	.....	.....	.....	2.75	51.01
Injuries to Employees	71.79	147.77	.....	.....	927.87
Other Personal Injuries and Property Damage	681.78	687.58	688.42	.....	.....
Disability Payroll	.....	.....	.....	.....	283.99
Employees Insurances	.....	465.87	660.60	692.20	.....
Safety Department Expense	.....	.....	.....	251.37	44.66
Miscellaneous Welfare Expenses	547.39	568.54	644.25	28.75	.....
Pensions	.....	.....	248.39	1,463.57	.....
Duplicate Miscellaneous Charges (Cr.)	1,233.34*	954.51*	1,740.39*	1,609.95*	1,127.11*
Stock and Bond Expense	976.92	1,752.37	1,732.06	1,528.87	1,982.49
Midland Company Services	4,306.50	3,744.30	4,778.32	5,680.15	3,617.58
Services Rendered (Cr.)	250.00*	.....	.....	.....	.....
Total General and Miscellaneous Expenses	$39,288.92	$38,988.36	$46,369.60	$46,597.56	$39,097.36

* Red in copy.

West Ohio Gas Company, Lima District

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Statement Lima Rate Case Expense for 9 Months of Year 1928 and Years 1929, 1930, 1931

Rate Case Expense—	Last 9 months year 1928	1929	1930	1931	First 4 months 1932	Total
Legal Expense	$1,966.85	$1,856.05	$1,789.45	$1,331.78	$1,072.43	$8,016.56
Expenses Incidental to Rate Case Hearings	345.47	478.22	801.98	375.05	179.34	2,180.06
Valuation Expense	244.05	14,619.62	3,289.25	1,035.72	641.48	19,830.12
Transcripts—blue prints, maps, etc	166.60	169.14	342.92	79.80	.....	758.46
Surety Bond Premium	880.00	440.00	440.00	440.00	440.00	2,640.00
Miscellaneous Expenses	79.71	16.03	11.49	.....	10.20	117.43
	3,682.68	17,579.06	6,675.09	3,262.35	2,343.45	33,542.63
Less Amount Written Off during year 1930						1,997.26
Balance Rate Case Expense 12/31/31						31,545.37
Less Amount Written Off during first 4 months 1932						937.68
Balance Rate Case Expense May 1, 1932						30,607.69

NOTE.—The City Commission of Lima passed a five (5) year rate ordinance on March 19, 1928. The Company filed its protest with the Public Utilities Commission. The total cost of this case to May 1, 1932, amounted to $33,542.63; during the year 1930 $1,997.26 of the cost was written off, and during first four months of year 1932 $937.68 was written off. It is proposed to amortize the total cost of the case over a five (5) year period, beginning Apr1 1, 1928, and ending April 1, 1933.

Exhibit distribution of Rate Expense—	Annual charge	Less amount written off	Adjusted annual charge
Last 9 months 1928	$5,031.39	.....	$5,031.39
Year 1929	6,708.52	.....	6,708.52
Year 1930	6,708.52	1,997.26	4,711.26
Year 1931	6,708.52	.....	6,708.52
Year 1932	6,708.52	937.68	5,770.84
First 3 months 1933	1,677.16	.....	1,677.16
	$33,542.63	$2,934.94	$30,607.69

[fol. 747] West Ohio Gas Company, Lima District

14

Commercial Expenses—Giving Effect to Credits Account of Joint District Expenses for Year Ended December 31, 1931

Commercial Expenses—	As shown by records of company	Expenses transferred other districts	Total Lima district
General Labor	$5,018.70	500.88*	$4,517.82
Bookkeeping	3,381.37	.....	3,381.37
Contracts	360.00	.....	360.00
Collecting	3,964.38	.....	3,964.38
Meter Reading	4,488.03	.....	4,488.03
Supplies and Expenses	2,996.70	239.63*	2,757.07
	$20,209.18	740.51*	$19,468.67
Commercial Expenses Transferred (Cr.)	740.51*	740.51	.....
Total Commercial Expenses	$ 19,468.67	.....	$19,468.67

NOTE.—During the year 1931 customers' gas bills for all districts were prepared in the Lima office, making necessary the above credits for labor and supplies. These credits were arrived at by determining the billing department expense per account and apportioning the expense of this department monthly to the operating districts of the Company on the basis of accounts served. In prior years these expenses were charged direct to the operating districts and no adjustments are involved.

* Red in copy.

[fol. 748] West Ohio Gas Company, Lima District

15

New Business Expenses showing Amount Credited Because of Services Apportioned

New Business Expenses—	As shown by records of company	Adjustments	Total Lima district
Management Salaries	$1,543.44	516.95*	$1,026.49
Other Office Salaries	396.00	.....	396.00
Demonstrations	1,162.11	160.65*	1,001.46
Home Service	407.26	.....	407.26
Piping and Appliances	94.91	.....	94.91
Advertising	1,391.33	281.90*	1,109.43
Canvassing and Soliciting	8,056.90	1,606.25*	6,450.65
New Business Supplies and Expenses	856.05	189.87*	666.18
Total	$13,908.00*	$2,755.62*	$11,152.38
New Business Expenses Transferred	2,755.62*	2,755.62	.....
Total New Business Expense	$11,152.38	.....	$11,152.38

NOTE.—Certain new business expenses incurred in the Lima office during the year 1931 were joint expenses common to all operating districts. The above adjustments show the amount credited to the Lima District for these services.

* Red in copy.

[fol. 749] West Ohio Gas Company, Lima District

16

General and Miscellaneous Expenses Chargeable Direct to Lima District During the Five Years 1927 to 1931, Inclsuive

General and Miscellaneous Expenses—	1927	1928	1929	1930	1931
Feneral and Office Salaries	$.....	$.....	$.....	$12.00	$.....
General Office Supplies and Expenses	1.07	.....	.....	35.79	.43
General Stationery and Printing	.....	.....	1.25	.....	.....
Maintenance of General Structures	2.78	.....	.....	.....	.....
Law Expenses	25.00	.....	.....	150.00	1.50
Insurance	1,828.62	1,378.00	1,680.60	1,800.51	1,662.14
Undistributed Adjustments	.....	.....	.....	.....	3.06
Contributions for Sustaining Chamber of Commerce	.....	.....	125.00	516.66	100.00
Annual Local Charitable Contributions	.....	.....	1,010.00	1,500.00	1,266.00
Occasional Civic and Charitable Special Funds	612.50	.....	.....	25.00	10.00
Other Donations	.....	722.32	2,433.34	10.00	12.00
Chamber of Commerce Membership Dues	.....	.....	450.00	200.00	200.00
National and State Utility Association Dues	.....	.....	.....	446.62	50.00
Other Association Expenses	.....	.....	480.24	.....	225.00
Miscellaneous General Expenses	51.86	.....	.....	.....	.....
Traveling Expenses Association	.....	.....	290.01	25.00	35.00
General Publicity and Advertizing	.....	.....	.....	222.23	54.01
Medical Expenses	.....	.....	.....	.....	1.10
Injuries to Employes	.....	.....	.....	.....	927.87
Regulatory Commission Expenses	1,880.88	470.05	.....	1,997.26	.....
Disability Payroll	.....	.....	.....	.....	283.99
Miscellaneous	.....	.....	14.90	.....	.....
Duplicate Miscellaneous Charges (Cr.)	552.63*	406.89*	785.17*	966.74*	502.79*
Services Rendered (Cr.)	250.00*	.....	.....	.....	.....
Total Direct General and Miscellaneous Expenses	$3,600.08	$2,523.48	$5,700.17	$5,974.33	$4,329.31

* Red in copy.

[fol. 750] West Ohio Gas Company, Lima District

17

General and Miscellaneous Expense—Apportionable Year Ended December 31, 1927

General Miscellaneous Expenses—	Total Company	Lima District portion
Administrative Salaries	$14,599.88	$9,953.46
Other General Office Salaries	11,455.60	7,810.40
General Office Supplies and Expenses	4,187.61	2,844.60
General Stationery and Printing	769.03	525.69
Maintenance of General Structures	184.50	126.59
Law Expenses	782.39	531.66
Insurance	2,201.72	1,505.32
Stores Expense	348.69	231.11
Undistributed Adjustments	550.35*	363.67*
Other Association Expenses	1,250.00	850.23
Miscellaneous General Expenses	7,984.85	5,431.21
Annual Audits	497.77	338.57
Injuries to Employees	103.66	71.79
Other Personal Injuries and Property Damage	1,000.00	681.78
Miscellaneous Welfare Expenses	802.71	547.39
Duplicate Miscellaneous Charges (Credit)	1,013.71*	680.71*
Stock and Bond Expenses	1,436.25	976.92
Midland Company Services	6,331.32	4,306.50
Total	$52,371.92	$35,688.84

NOTE.—The foregoing expenses are incurred by the General Office in Lima for the benefit of the Company as a whole. They are apportioned each month to the operating districts of the Company in the same ratio as that which the gross revenue from gas sales of each district during the month bears to the gross revenue from gas sales of the entire Company during the same month. The amount chargeable to the Lima District during the year 1927 is equal to 68.14% of the apportionable expenses.

* Red in copy.

[fol. 751] West Ohio Gas Company, Lima District

18

General and Miscellaneous Expenses—Apportionable Year Ended December 31, 1928

General and Miscellaneous Expenses—	Total Company	Lima District portion
Administrative Salaries	$14,166.72	$9,747.98
Other General Office Salaries	11,592.07	7,968.33
General Office Supplies and Expenses	3,942.24	2,724.88
General Stationery and Printing	608.51	417.28
Maintenance of General Structures	290.26	200.45
Law Expense	697.80	479.02
Insurance	2,125.85	1,459.44
Store Expense	340.84	232.01
Undistributed Adjustments	127.41*	86.40*
Annual Local Charitable Contributions	1,628.54	1,118.60
Chamber of Commerce Membership Dues	100.00	68.69
National and State Util. Assn. Dues	838.10	575.67
Miscellaneous General Expenses	4,711.61	3,236.30
General Publicity and Advertising	1,553.82	1,067.29
Annual Audits	635.53	436.53

West Ohio Gas Company, Lima District

18

General and Miscellaneous Expenses—Apportionable Year Ended December 31, 1928

	Total Company	Lima District portion
Injuries to Employees	206.34	147.77
Other Personal Injury and Property Damage	999.96	687.58
Insurance—Employees	678.25	465.87
Miscellaneous Welfare Expense	824.91	568.54
Duplicate Miscellaneous Charges (Cr.)	806.55*	547.62*
Stock and Bond Expenses	2,551.21	1,752.37
Midland Company Services	5,451.19	3,744.30
Total	$53,009.79	$36,464.88

NOTE.—The foregoing expenses ar incurred by the General Office in Lima for the benefit of the Company as a whole. They are apportioned each month to the operating districts of the Company in the same ratio as the gross revenue from gas sales of each district bears to the entire gross revenue from gas sales of the Company. The amount chargeable to Lima District during the year 1928 is equal to 68.79% of the apportionable expenses.

* Red in copy.

[fol. 752] West Ohio Gas Company, Lima District

19

General and Miscellaneous Expenses—Apportionable Year Ended December 31, 1929

General and Miscellaneous Expenses—	Total Company	Lima District portion
Administrative Salaries	$15,583.34	$10,741.61
Other General Office Salaries	11,689.63	8,051.35
General Office Supplies and Expenses	3,974.47	2,733.82
General Stationery and Printing	641.68	442.51
Maintenance of General Structures	8.80	6.07
Law Expenses	1,235.00	849.80
Insurance	2,316.06	1,594.62
Stores Expense	594.90	410.21
Undistributed Adjustments	1,946.03	1,317.65
Chamber of Commerce Membership Dues	100.00	69.59
National & State Utility Assn. Dues	632.91	437.00
Miscellaneous General Expenses	5,898.68	4,060.83
General Publicity and Advertising	2,326.50	1,601.63
Annual Audits	828.27	570.22
Personal Injuries and Property Damage	1,000.00	688.42
Insurance	959.57	660.60
Miscellaneous Welfare Expenses	914.62	629.35
Pensions	363.10	248.39
Duplicate Miscellaneous Charges (Cr.)	1,411.71*	955.22*
Stock and Bond Expenses	2,516.83	1,732.66
Midland United Company Services	6,940.88	4,778.32
Total	$59,059.56	$40,669.43

NOTE.—The foregoing expenses are incurred by the General Office in Lima for the benefit of the Company as a whole. They are apportioned each month to the operating districts of the Company in the same ratio as the gross revenue from gas sales of each district bears to the entire gross revenue from gas sales of the company. The amount chargeable to Lima District during the year 1929 is equal to 68.86% of the apportionable expense.

* Red in copy.

[fol. 753] West Ohio Gas Company, Lima District

20

General and Miscellaneous Expenses—Apportionable Year Ended December 31, 1930

General and Miscellaneous Expenses—	Total Company	Lima District portion
Administrative Salaries	$20,800.00	$14,227.01
Other General Office Salaries	10,277.15	7,033.10
General Office Supplies and Expenses	2,975.03	2,022.33
General Stationery and Printing	738.25	503.80
Maintenance of General Structures	4.00	2.73
Maintenance of General Office Equipment	384.99	259.53
Law Expenses	2,257.42	1,543.07
Insurance	2,037.56	1,391.92
Undistributed Adjustments	870.11*	580.99*
Occasional Civic and Charitable	40.15	27.14
Chamber of Commerce Membership Dues	100.00	68.86
National and State Utility Assn. Dues	449.80	308.58
Miscellaneous General Expenses	3,415.96	2,333.88
Traveling Expenses Association	327.01	221.84
General Publicity and Advertising	1,433.69	978.54
Annual reports and Stockholders Bulletins	730.33	500.53
Consulting Engineers	77.89	52.39
Annual Audits	439.48	298.06
Medical Expenses	4.00	2.75
Insurance—Employees	1,027.10	692.20
Safety Department	353.39	251.37
Miscellaneous Welfare Expenses	42.44	28.75
Pensions	2,139.90	1,463.57
Duplicate Miscellaneous Charges (Cr.)	951.69*	643.21*
Stock and Bond Expenses	2,241.18	1,528.87
Midland Company Services	8,316.56	5,680.15
Inventory Expense	631.22	426.46
Total Apportionable Expenses	$59,422.70	$40,623.23

NOTE.—The foregoing expenses are incurred by the General Office in Lima for benefit of the Company as a whole. They are apportioned each month to the operating districts of the Company in the same ratio as the gross revenue from gas sales of each district bears to entire gross revenue from gas sales of the company. The amount chargeable to Lima District during the year 1930 is equal to 68.36% of the apportionable expense.

* Red in copy.

[fol. 754] West Ohio Gas Company, Lima District

21

General and Miscellaneous Expenses—Apportionable Year Ended December 31, 1931

General and Miscellaneous Expenses—	Total Company	Lima District portion
Administrative Salaries	$17,389.32	$11,561.04
Other General Office Salaries	9,630.91	6,402.97
General Office Supplies and Expenses	1,720.29	1,143.71
General Stationery and Printing	1,214.47	807.43
Operation of General Structures	1,372.98	912.80
Maintenance of General Structures	264.73	176.00
Maintenance of General Office Equipment	30.75	20.44
Law Expenses	5,960.38	3,962.67

West Ohio Gas Company, Lima District

20

General and Miscellaneous Expenses—Apportionable Year Ended December 31, 1930

General and Miscellaneous Expenses—	Total Company	Lima District portion
Insurance	2,175.07	1,446.06
Undistributed Adjustments	214.95	142.91
Chamber of Commerce Membership Dues	182.82	121.55
National and State Utility Assn. Dues	541.92	360.29
Other Association Expenses	25.00	16.62
Miscellaneous General Expenses	1,907.28	1,268.03
Traveling Expenses—Association	272.60	181.24
General Publicity and Advertising	1,125.53	748.30
Annual reports and Stockholders Bulletins	92.10	61.23
Annual Audits	548.16	364.44
Medical Expenses	75.07	49.91
Safety Department	67.18	44.66
Duplicate Miscellaneous Charges (Cr.)	939.05*	624.32*
Stock and Bond Expenses	2,981.93	1,982.49
Midland United Company—Services	5,441.31	3,617.58
Total	$52,295.70	$34,768.05

NOTE.—The foregoing expenses are incurred by the General Office in Lima for the benefit of the Company as a whole. They are apportioned each month to the operating districts of the Company in the same ratio as the gross revenue from gas sales of each district bears to the entire gross revenue from gas sales of the company. The amount chargeable to Lima District during the year 1931 is equal to 66.48% of the apportionable expense.

* Red in copy.

[fol. 754a] West Ohio Gas Company

Ordinance Rates Comparison

[fol. 755] COMPANY EXHIBIT No. 105

POB

West Ohio Gas Company, Lima District

Statement Revenue and Expenses for Year Ended March 31, 1928, Giving Effect to Revenue from Sales under Rates Fixed by Ordinance Passed by City of Lima vs. Revenue Derived from Present Rates

Operating Expenses—	Ordinance rate	Present rate
Gas Produced and Purchased	$176,861.75	.....
Distribution Expenses	43,233.85	.....
Commercial Expenses	22,721.55	.....
New Business Expenses	9,049.33	.....
General and Miscellaneous Expenses	39,065.17	.....
Indirect Charge to Construction (Cr.)	2,869.41*	.....
Retirement Allowance	53,639.00	.....
Allowance for Amortization of Pipe Line	23,416.00	.....
Real and Personal Property Taxes	24,778.32	.....
State of Ohio—Excise Tax	7,661.69	.....
Tax for Maintenance Public Utilities Comm.	290.29	.....

COMPANY EXHIBIT No. 105

POB

West Ohio Gas Company, Lima District

Operating Expenses	Ordinance rate	Present rate
Federal Income Tax	7,256.57	.....
Uncollectible Accounts	2,780.82	.....
Total Cost of Operation	$407,884.93	$407,884.93
Gross Revenue under Rates	299,517.91	494,283.40
Net Applicable to Valuation	$108,367.02*	$86,398.53
% Return on Valuation of $1,901,696.26	0*	4.54

Ordinance Rates—	Cubic feet gas sold	Revenue
90¢ for the first 1,000 cubic feet used each month	110,529,800	99,476.82
80¢ per MCF for the next 3,000 cu. ft. used each month	164,837,700	131,870.16
75¢ per MCF for the next 6,000 cu. ft. used each month	46,675,600	35,006.70
55¢ per MCF for all over 10,000 cu. ft. used each month	60,298,600	33,164.23
Total	382,341,700	$299,517.91

The total cubic feet of gas sold year ended March 31, 1928, was 382,341,700. From an analysis of each bill rendered during the year ended March 31, 1928, it was determined that 28.91% of total cubic feet sold would come within the first step of the ordinance passed by the City of Lima, 43.11% in the second step, 12.21% in the third and 15.77% in the last step of the ordinance rates.

*Red in copy.

[fol. 756]

West Ohio Gas Company, Lima District

Statement Revenue and Expenses Giving Effect to Revenue that Would Have Been Received for Gas Sold under Ordinance Rates as Compared with Actual Revenue Received by Company for Years 1928, 1929, 1930, 1931

	Year 1928		Year 1929		Year 1930		Year 1931	
	Ordinance rate	Present rate	Ordinance rate	Present rate	Ordinance rate	Present rate	Ordinance rate	Present rate
Operating Expenses—								
Gas Produced and Purchased	$151,291.37	.....	$160,430.27	.....	$156,249.41	.....	$146,063.48	.....
Distribution Expenses	42,983.21	.....	42,927.46	.....	38,244.04	.....	41,734.44	.....
Commercial Expenses	22,317.48	.....	22,339.58	.....	20,832.90	.....	19,468.67	.....
New Business Expenses	10,645.94	.....	13,810.91	.....	13,845.39	.....	11,152.38	.....
General and Miscellaneous Expenses	44,019.75	.....	53,078.12	.....	51,308.82	.....	45,805.88	.....
Indirect Charges to Construction (Cr.)	1,868.12*	.....	2,652.13*	.....	8,624.15*	.....	2,477.87*	.....
Retirement Allowance	53,639.00	.....	53,639.00	.....	53,639.00	.....	53,639.00	.....
Allowance for Amortization of Pipe Line	23,416.00	.....	23,416.00	.....	23,416.00	.....	23,416.00	.....
Real and Personal Property Taxes	23,878.04	.....	24,889.29	.....	23,738.16	.....	20,460.00	.....
State of Ohio—Excise Tax	7,192.34	.....	7,381.69	.....	7,452.86	.....	6,999.33	.....
Tax for Maintenance Public Util. Comm	291.81	.....	281.67	.....	271.80	.....	289.25	.....
Federal Income Taxes	10,371.58	.....	8,867.30	.....	7,061.73	.....	8,387.46	.....
Uncollectible Accounts	2,830.02	.....	2,753.43	.....	2,286.55	.....	2,099.47	.....
Total Cost of Operation	$391,008.42	$391,008.42	$411,172.59	$411,172.59	$389,722.51	$389,722.51	$377,037.49	$377,037.49
Gross Revenue under rates	$314,857.19	$511,105.08	$317,930.32	$511,853.64	$308,847.82	$491,255.46	$302,278.08	$457,775.74
Net Applicable to Valuation	$76,151.23*	$120,096.66	$93,242.27*	$100,681.05	$80,874.69*	$101,532.95	$74,759.41*	$80,738.25
% Return on valuation of $1,901,696.26	0*	6.32	0*	5.29	0*	5.34	0*	4.25
Total Cubic Feet of Gas Sold	404,189,900		408,087,500		396,470,300		387,856,000	
Less Cridersville Gas Sales	2,268,500		2,243,200		2,220,000		1,992,100	
Total Cubic Feet Sold	401,921,400		405,844,300		394,250,300		385,863,900	

From analysis of each bill rendered to Lima district customers for the year ending March 31, 1928, it was found that 28.91% of gas sales for that year came within the first step of the ordinance rates passed by the City of Lima, and 43.11% in the second step, 12.21% in the third step and 15.77% in the last step. For the purpose of this exhibit the same percentages are applied to gas sales for the years 1928, 1929, 1930 and 1931 in order to give effect to operations under the ordinance.

	1928		1929		1930		1931	
	Cubic feet	Revenue	Cubic feet	Revenue	Cubic feet	Revenue	Cubic feet	Revenue
For the first 1,000 cu. ft. @ 90¢ per MCF	116,195,500	$104,575.95	117,329,600	$105,596.64	113,977,800	$102,580.02	111,553,300	$100,397.97
For the next 3,000 cu. ft. @ 80¢ per MCF	173,268,300	138,614.64	174,959,500	139,967.60	169,961,300	135,969.04	166,345,900	133,076.72
For the next 6,000 cu. ft. @ 75¢ per MCF	49,074,600	36,805.95	49,553,600	37,165.20	48,138,000	36,103.50	47,114,000	35,335.50
For all over 10,000 cu. ft. @ 55¢ per MCF	63,383,000	34,860.65	64,001,600	35,200.88	62,173,200	34,195.26	60,850,700	33,467.89
	401,921,400	$314,857.19	405,844,300	$317,930.32	394,250,300	$308,847.82	385,863,900	$302,278.08

* Red in copy.

[fol. 756a] Filed Jun. 6, 1932. The Public Utilities Commission of Ohio.

Company Exhibit #106

No. 5137

West Ohio Gas Company

Cost of Money

[fol. 757] Filed June 8, 1932. The Public Utilities Commission of Ohio.

West Ohio Gas Company

Statement Showing the Cost of Money Secured Through the Sale of Securities

Bonds

Description—		
First and Refunding Mortgage 6% Gold Bonds consisting of original issue dated December 1, 1924, and supplemental issue dated June 1, 1931, maturing December 1, 1954.		
Amount—		
Principal amount of Bonds issued		$1,300,000.00
Original issue, 12-1-24	$1,000,000.00	
Supplemental issue, 6-1-31	300,000.00	
	$1,300,000.00	
Proceeds—		
Amount realized by the company through the sale of entire issue to the Halsey Stuart Company		1,178,000.00
Original issue	$890,000.00	
Supplemental issue	288,000.00	
	$1,178,000.00	
Discount—		
Discount allowed		122,000.00
Expenses—		
Cost of sale including legal, printing and other expenses		8,244.21
Original issue	6,552.02	
Supplemental issue	1,692.19	
	$8,244.21	
Annual Cost of Money—		
Interest Charges	$78,000.00	
Discount and expense to be amortized annually	4,467.60	
Federal Tax at source (average)	650.04	
State Tax (average)	172.38	
Federal and state tax on supplemental issue being based on average existence in connection with original issue.		
Total annual cost		83,290.02
Annual Cost %—		
Annual Cost to Company expressed in Per Cent		7.07+
Yield to Purchaser		6.97+

Statement Showing the Cost of Money Secured Through the Sale of Securities

Bonds—Continued

Average Sale Price per $100.00—		
Average sale price per $100.00 face value		$90.61
Original issue	$1,000,000.00 @ $89.00.	
Supplemental issue	300,000.00 @ 96.00.	

[fol. 758] Stock

Cumulative 7% Preferred Stock—$100.00 par value—7,500 shares x $100.00	$750,000.00
Discount, 12½	93,750.00
Amount received from sale of stock at 87½	656,250.00
Dividend Requirements	52,500.00
Effective Rate of Return	8%

Bonds

[fol. 758a] COMPANY'S EXHIBIT No. 107

No. 5137

West Ohio Gas Company

Schedule of Securities Allocation

[fol. 759] Filed June 8, 1932. The Public Utilities Commission of Ohio

West Ohio Gas Company

Schedule of Securities Allocation

	Values fixed by P. U. Comm.	Transmission line value	% Allocation trans. line	Amount trans. line allocated	Value including trans. line allocation
Old Companies—					
(1) The Lima Natural Gas Co	$2,130,190.00	$1,409,760.00	52%	$736,119.00	$1,456,549.00
The Lima Gas Light Co	683,151.00	.....	....	.....	683,151.00
The Wapakoneta Natural Gas Co	119,279.00	.....	13%	178,277.00	297,556.00
The St. Marys Gas Co	108,713.00	.....	16%	223,877.00	332,590.00
The Celina Gas Co	84,897.00	.....	19%	271,487.00	356,384.00
Totals	$3,126,230.00	$1,409,760.00	100%	$1,409,760.00	$3,126,230.00

	Total value including allocated trans. line	Each district % of total value
(2) Lima District	$2,139,700.00	68.44%
Wapakoneta District	297,556.00	9.52%
St. Marys District	332,590.00	10.64%
Celina District	356,384.00	11.40%
	$3,126,230.00	100.00%

Original Issue of Securities—

First and Refunding Mortgage 6% Gold Bonds—Dec. 1, 1924–1954	$1,000,000.00
Cumulative 7% Preferred Stock (7,500 shares @ $100.00)	750,000.00
Common Stock (75,000 shares @ $21,685)	1,626,381.30
	$3,376,381.30

Annual Interest Charge on Securities—Bonds	$60,000.00
Preferred Stock	52,500.00
	$112,500.00

(3) Each District's proportion of Annual Interest Charge, allocated on the percentage basis as shown in table (2).

	% of total	Bonds	Preferred stock	Total
Lima	68.44%	$41,064.00	$35,931.00	$76,995.00
Wapakoneta	9.52%	5,712.00	4,998.00	10,710.00
St. Marys	10.64%	6,384.00	5,586.00	11,970.00
Celina	11.40%	6,840.00	5,985.00	12,825.00
	100.00%	$60,000.00	$52,500.00	$112,500.00

Common Stock Dividends Paid—District Allocation	1928	1929	1930	1931
Lima	$35,931.00	$35,931.00	$35,931.00	$42,542.31
Wapakoneta	4,998.00	4,998.00	4,998.00	5,917.63
St. Marys	5,586.00	5,586.00	5,586.00	6,613.82
Celina	5,985.00	5,985.00	5,985.00	7,086.24
	$52,500.00	$52,500.00	$52,500.00	$62,160.00
Per Share	70¢	70¢	70¢	79.08¢

(Here follows table, side folio 760)

NOTES AND COMMENTS—

The value of the Old Ohio Companies as shown in table (1) were fixed by The Public Utilities Commission of Ohio in its official order issued in Case No. 3330, dated November 26, 1924.

The transmission line was owned by The Lima Natural Gas Company and is included in the total value of Lima Natural Gas Co. property, fixed by the Commission.

The transmission line was utilized for the purpose of transmitting gas to each of the companies, and for the purpose of this exhibit the transmission line is allocated to each of the districts served by the line at the time securities were issued.

The reproduction cost of the line shown in column 2, table 1, was determined as of September 1, 1924, by the engineering firm, U. G. I. Contracting Company. The percentages of allocation of the line as shown in column 3, table 1, was arrived at by finding each district's percentage of gas take as related to the total quantity of gas delivered by the line.

Column 5, table 1, shows the value fixed by the Public Utilities Commission adjusted to apportion to each district its proportion of transmission line allocated as above stated.

Table 2 shows each district's percentage of the total value of the property after giving effect to allocating transmission line.

Table 3 shows each district's proportion of the annual charge of interest on bonds and preferred stock, allocated on the same basis, as table 2 shows each district's property value as related to the entire value of the property.

[fol. 760]

COMPANY EXHIBIT 108

WFO

Filed July 19, 1932. The Publ. Utilities Commission of Ohio

West Ohio Gas Company, Lima District

Trends of Construction Cost Based On Construction Cost Index Numbers

Class of Property—	Commission's reproduction value as of 3-31-1928 and stated in its order of 1-27-32	Change in value as of December 31, 1928		Change in value as of December 31, 1929		Change in value as of December 31, 1930		Change in value as of December 31, 1931		Change in value as of May 31, 1932	
		Per cent and conversion factor	Amount	Per cent and conversion factor	Amount	Per cent and conversion factor	Amount	Per cent and conversion factor	Amount	Per cent and conversion factor	Amount
	(1)	(2)	(3) = (2x1)	(4)	(5) = (4x1)	(6)	(7) = (6x1)	(8)	(9) = (8x1)	(10)	(11) = (10x1)
Town Border, Meter and Regulator Station...	$2,332	1.02	$2,379	.98	$2,285	.97	$2,262	.84	$1,959	.75	$1,749
Office Furniture and Fixtures.....	12,733	.99	12,606	.96	12,224	.80	10,186	.68	8,658	.66	8,404
Transportation Equipment.....	8,395	.99	8,311	.96	8,059	.80	6,716	.68	5,709	.66	5,541
Manufacturing Plant—Buildings.....	87,040	.99	86,170	.96	83,558	.93	80,947	.78	67,891	.71	61,798
Manufacturing Plant—Apparatus.....	164,465	1.03	169,399	1.005	165,287	.97	159,531	.85	139,795	.78	128,283
Manufacturing Plant—Yard Structures.....	206,714	1.02	210,848	1.03	212,915	.97	200,513	.86	177,774	.79	163,304
Manufacturing Plant—Miscellaneous.....	45,604	1.04	47,428	.97	44,236	1.02	46,516	.86	39,219	.75	34,203
Distribution System—Buildings.....	1,906	.99	1,887	.96	1,830	.93	1,773	.78	1,487	.71	1,353
Distribution System—Building Contents.....	3,260	1.04	3,390	.97	3,162	1.02	3,325	.87	2,836	.75	2,445
Distribution Mains:											
Black steel, galvanized steel, and wrought iron pipe:											
Less than 6 in. dia.....	508,560	1.03	523,817	1.00	508,560	1.01	513,646	.96	488,218	.93	472,961
6 in. dia. and larger.....	260,842	1.03	268,667	1.00	260,842	1.01	263,450	.96	250,408	.93	242,583
Cast Iron pipe:											
Less than 6 in. dia.....	61,973	1.03	63,832	1.00	61,973	1.01	62,593	.96	59,494	.93	57,635
6 in. dia. and larger.....	31,763	1.03	32,716	1.00	31,763	1.01	32,081	.96	30,492	.93	29,540
Distribution Services:											
Black steel, galvanized steel and wrought iron pipe:											
Less than 6 in. dia.....	138,991	1.00	138,991	1.03	143,161	.98	136,211	1.01	140,381	1.03	143,161
Distribution System—House Governors.....	292	1.00	292	1.01	295	1.00	292	1.01	295	.99	289
Distribution System Meters and Connections..	162,984	1.00	162,984	1.01	164,614	1.00	162,984	1.00	162,984	.99	161,354
Distribution System Tools.....	3,627	1.02	3,700	1.01	3,663	1.005	3,645	.98	3,554	.97	3,518
Total.....	$1,701,481		$1,737,417		$1,708,427		$1,686,671		$1,581,154		$1,518,121
Weighted Average.....	.....	1.021		1.004		.991		.929		.892	
Transmission Main.....	541,702	1.03	557,953	1.00	541,702	1.01	547,119	.96	520,034	.93	503,783
Total including Trans. Main.....	2,243,183		2,295,370		2,250,129		2,233,790		2,101,188		2,021,904
Weighted Average incl. Trans. Main...	.....	1.023		1.00		.994		.94		.901	

[fol. 761] [STATEMENT OF E. L. HEYSER]

E. L. Heyser,

1401 Arch Street, Philadelphia, Pa.

May 28, 1930.

"Honorable Frank W. Geiger, Chairman, The Public Utilities Commission of Ohio, Columbus, Ohio.

DEAR SIR:

"In accordance with your request, we have given careful consideration to the questions raised by you during the recent hearing in West Ohio Gas Company case Number 5137 relative to the extent to which the gas manufacturing plant and the transmission main facilities used by the company in serving gas to the public in the City of Lima should be included in the rate base. In reply we beg to submit the following.

"In view of the fact that your question was addressed to the engineers who testified in this case, we assume that Your Honor had in mind primarily the inquiry whether in the light of the present circumstances the entire property now owned by the company and used in connection with supplying gas to Lima is in fact still reasonably used and useful for such purpose; and if not to what extent the property could be considered as not used and useful. Our answer is directed solely to the factual phase of this problem. In so far as Your Honor's question is directed to any legal problem involved we shall of course not attempt to answer the inquiry.

"It is our opinion that reasonable business judgment dictates and requires the possession and use of the entire existing system for the adequate assurance to the people of Lima that they will have a satisfactory and uninterrupted gas service.

"Experience in the construction, operation and investi-[fol. 762] gation of gas utilities is essential as a basis for forming a judgment in this matter. Conclusions with respect to any individual gas utility must obviously be supplemented by a knowledge and study of local operating conditions. Our conclusions in this matter (2) have therefore been based on information with respect to the history of the past gas situation in Lima; on a forecast of the prob-

able future situation; on operating data for the property as furnished to us by the management from the company records; and on the results of our field inspection of the property.

"Manufactured gas service was apparently started in Lima about the 1871 by The Lima Gas Light Company, or a predecessor of that Company, and natural gas service was also rendered in the City, beginning in the year 1887, by The Lima Natural Gas Company, both of which companies were merged into West Ohio Gas Company in the year 1924.

"The Lima Gas Light Company owned a gas manufacturing plant and a limited distribution system, and furnished manufactured gas for lighting purposes to residential and commercial customers in the central section of the city. In the year 1910, this Company installed the two present 8'6" water gas sets and auxiliaries.

"The Lima Natural Gas Company owned gas transmission mains from the sources of gas supply to Lima and a distribution system in the city by means of which natural gas was furnished to customers for heating purposes. After the gas available to the Company from several sources of supply in Indiana and Ohio had been exhausted, the Company entered into a contract in the year 1911 for the purchase of natural gas from the Medina Gas & Fuel Company at a point about 44 miles East of Lima and constructed the [fol. 763] present pipe line through Kenton for the purpose of obtaining gas under this contract.

"About six or seven years later the natural gas supply from this source became inadequate to meet the then existing demand during the winter months and resulted in the loss of a substantial portion of the business of the Lima Natural Gas Company and frequent and justifiable complaints from other natural (3) gas customers. The management, which had assumed the supervision and operation of both local companies, made during a period extending over four years detailed studies of the situation and the possible means of providing adequate and reliable service. The results of this prolonged study established that the natural gas supply available to the company under the purchase contract would not likely increase but would probably continue to decrease; and that there were no other sources then available from which it was practical to pur-

chase natural gas in sufficient quantities to make possible the supplying of gas to the people of Lima by any means other than the distribution of a mixed or manufactured gas.

"Consequently the management decided in the year 1924 to change from a natural to a manufactured gas basis by furnishing a manufactured blue gas mixed with and enriched by the natural gas. Such a policy, after adequate manufacturing equipment were installed, would assure for Lima, the year around, a continued and uninterrupted service of gas of satisfactory and uniform quality.

"In connection with this matter the management consulted the United Gas Improvement Company, one of the largest operators and constructors of gas properties in the United States. That company recommended that the [fol. 764] plant should be increased in capacity by the installation of a 9′0″ carburetted water gas set and necessary auxiliaries and also that the two existing 8′6″ water gas sets be remodeled. The recommendations were considered and adopted by the company, and the plant improvements and additions were completed in the latter part of the year 1924.

"The decision as to the capacity of the manufacturing equipment was based upon the extraordinary situation existing in Lima which made it essential that the company be prepared in the event of temporary failure of natural gas supply (which failures we are informed had frequently occurred in the past and (4) have also occurred on several occasions since the improvements were made) temporarily to supply the entire demand for gas in Lima through the manufacturing plant.

"The size of a manufacturing plant which good business judgment requires for any locality, is one of sufficient capacity to care for existing demands, to meet probable needs arising from growth of business (including prospective and reasonably anticipated new types of use), and to assure an adequate protective reserve. The plant should also be of sufficient size to make possible economical operation. Frequently a curtailment of investment in this respect is more than offset by increased operating costs.

"The plant at Lima as constructed by the management in exercising its judgment of requirements has a capacity which in its relation to the daily demand for gas is not out

of line with that existing in other communities. A study of the figures of this relation in nine different communities shows that the average relation between the maximum daily demand and the maximum daily capacity of such manufacturing plants is in the ratio of 1 to 3.63. This ratio for the Lima plant for 1928 was 1 to 3.45. In this connec- [fol. 765] tion we call the Commission's attention to the fact that regardless of the capacity of a plant, it is always necessary to have at least one more set than the number required to be used in order to meet the maximum demand.

In other words if to meet the maximum requirements it is necessary to have in operation two sets at any time, it is essential for protective purposes that the company possess at least three manufacturing sets. This is a fundamental rule which is followed in all properly operated gas companies. The Commission's attention is also directed to the fact that the capacity of manufacturing sets bears no direct relation to their cost. For example a 6′0″ set will produce approximately 800,000 cubic feet of carburetted water gas per day if operated 24 hours, whereas a 9′0″ set will produce approximately 2,320,000 (5) cubic feet of such gas a day, yet the difference in the cost of these two sets is only about $7,000. It is apparent that the additional investment in the larger plant is far more than offset by the decreased cost of operation, resulting from being able to manufacture the required amount of gas in a shorter period. By the use of the larger sets, as is the fact in the Lima operation, the period during which the set is operated can generally be limited so that only one shift need be employed daily.

"The gas manufactured at the Lima plant is a blue gas with a heat content of about 300 B.T.U. Before distribution to the public the company enriches this gas to 550 B.T.U. This enriching may be done by mixing the blue gas with natural gas, and the company has adopted this method of enrichment. It is also possible to enrich the blue gas to the desired B.T.U. content by the use of oil in the manufacturing process, but operating experience has demonstrated that the B.T.U. content of gas thus enriched is not [fol. 766] as readily controlled as it is where natural gas is used, and it is further demonstrated that oil enrichment results in higher plant maintenance costs due, among other factors, to the deposit of oil residuals on the checker-brick

and linings of the carburetors and superheaters and in the oxide of the purifiers. In the case of carburetted water gas distribution costs are also higher on account of the more rapid collection of condensates in the drips.

"The transmission main used in conducting the natural gas from the point of purchase to the regulator at the Lima city gate is a 10 and 12 inch main. It is true that if adequate pressure of the gas can be obtained at the point where the gas enters the line, this line is of sufficient size to carry a considerably greater quantity of gas than that now required at Lima. It is also true that unless the gas is furnished at a sufficiently high pressure the line is not large enough to conduct all the natural gas required for Lima, even under present (6) conditions. The question is whether in view of these considerations a pipe line of the size of the existing line is one of reasonable size for use in bringing the natural gas enricher to Lima.

"The volume of gas necessary to meet the present demand (including a reasonable amount for future expansion), the pressure at the point of delivery to the distributing property, the length of pipe line, and the field pressures (i. e., pressures at which the gas is available or enters the pipe line) are the most important factors to be considered in designing a gas transmission line. Care must be exercised in determining the pressure at which the gas shall be allowed to enter the transmission main, but if low transmittal pressure can be maintained, the line losses and interruptions in service can be better controlled. From the history recited above and information submitted by com- [fol. 767] pany officials as to the past and present conditions of operation, we are of the opinion that the management in charge of the property used sound judgment in the design and installation of the present transmission line.

"The general superintendent of the company advises us that it is necessary that the natural gas reach the Lima town border regulator station at a pressure of not less than 20 pounds. The lower the pressure of the gas required at the east end of the pipe line in order to obtain the necessary 20 pounds pressure at Lima, the less probable it is that there will be interruptions in the supply of the natural gas enricher; for the size of the pipe line determines the pressure at which the gas must pass into the transmission

line if there is to be delivered a given quantity at a required pressure. Even under present operating conditions when the natural gas enricher constitutes but about 40 per cent of the gas needed to supply the City of Lima, the larger pipe line is advisable in order to provide this better protection against interruptions in the required flow of the natural (7) gas enricher during periods of heavy demand. Even under present conditions of supply and with the use of the existing pipe line which makes possible the transmissal of gas with a 30 pound pressure at Kenton, we are informed that there are numerous occasions during the winter months of each year when the flow has been appreciably below requirements. If a smaller main were in service it is apparent that this diminution of supply would have been both more frequent and of greater duration. The test of the size of a pipe line which should be used is not based upon mere maximum capacity of the line under ideal conditions, but is determined by deciding what size line is reasonably necessary in order that at the required pressure at the point of delivery a sufficient flow of gas may be best assured at all times, and also what size will be reasonably [fol. 768] best adapted for use under conditions which exist or can be reasonably predicted as probable. Even if this line were being rebuilt today, proper construction practice based on construction experience, supplemented by the facts as to local conditions and as to the now probable developments in the gas industry, would not dictate or permit the use of a pipe line smaller than the one in service.

"We desire to direct the Commission's attention to the fact that in our reproduction cost estimates submitted in evidence in Case Number 5137 before the Public Utilities Commission of Ohio, we have included only that portion of the estimated costs for the transmission main which we have considered as applicable to Lima service on the basis of the ratio which the amount of natural gas delivered to Lima bears to the total gas transmitted through this main. That part of the value of the transmission line which is allocated to Lima under this method is an amount considerably less than the cost of constructing an eight inch transmission line of the same type.

"Respectfully submitted, (Signed) E. L. Heyser."

[fol. 769] STATEMENT OF R. L. LYNCH

"In response to a series of questions that have been propounded by the Chairman of the State Utilities Commission, the answers to which should give a composite picture of the method of operating the Lima Gas Plant and the reasons for that method and the results obtained thereby.

"It is our opinion that it would be necessary to go back to 1923 and 1924, which was the end of the natural gas era and the beginning of the manufactured gas period. This change was necessitated from the standpoint of service to the customers of this company who had put up with haphazard service for so many years that the company had to either improve its service or go out of business.

"The question of improvement quickly resolved itself into one category—that we must have control of gas production so that we could give our customers the service that modern competition demands from us, which can be expressed in this phrase—'Service to the Customer When he wants it, As he wants it and How he wants it.' Let it be understood that the gas industry will prosper or fail on that homely phrase.

"There was only one method of control of gas production and that was through the medium of modern gas manufacturing machinery. A close check of the plant apparatus, the most of which was installed by the United Gas Improvement Company of Philadelphia, recognized as the country's leading gas engineers, was in good condition and modern but not of sufficient capacity to guarantee uninterrupted service.

"The writer then recommended the purchase of certain additional gas apparatus that would give the necessary capacity with sufficient stand-by that the West Ohio Gas Company could go to its customers and say that for the first time in the Company's history it could guarantee its service.

[fol. 770] (2) This apparatus was installed in 1923-24 and we are able to say that ever since the manufacturing of gas began we have delivered the service every minute of the day and night and the result has been almost a total

absence of complaints from our customers that we could not remedy.

"We say that we installed sufficient capacity to guarantee supply. What is that 'Sufficient capacity'? It is that capacity that will equal the amount of gas demanded between the hours of 11:00 A. M. and 12:00 M. on Thanksgiving day. It is recognized that if you can meet that demand you can meet all other demands of the year.

"What is reserve capacity? We now have a much harder problem. It can not be expressed in per cent of total, because the ratio of demand to constant load in different locations will vary. Some engineers may decide that a reserve figure arbitrarily arrived at would be right while another looking farther into the future would recommend more reserve and they may both be right.

"In January, 1924, we had a potential load of 2,000 M.C.F. The industrial plants had abandoned the use of gas because of the repeated failures of natural gas supply. To recover and build up our business we had to control the supply, and the only answer to that was an adequate manufacturing plant. We could procure about 500 M.C.F. of industrial business per day if we could guarantee service. In the meantime the City of Lima was growing and extensions were being made to new domestic customers. The plant capacity at this time was 1,500 M.C.F. with a second gas machine in reserve. Let it be understood that from a hazard standpoint, there must be adequate stand-by and the second machine only could be so considered.

"With the above actual load of about 2,000 M.C.F. and anticipated industrial business and the natural growth of the city, it was deemed (3) necessary to install the third gas machine.

[fol. 771] "Permit me to go afield for a moment. The Baltimore and Ohio Railroad runs passenger trains from Detroit to Cincinnati. It maintains coaches which have a seating capacity of sixty (60). It is possible that the coach will average four (4) passengers. Have they a large reserve?

"The electric generating station at Philo, Ohio, has an installation many times greater than their minimum demand and it is necessary. Centralized steam plants have large reserve to insure continuous operation.

"The Lima City Water Works maintains a pumping station in Lima, wherein they have two large steam driven water pumps, two smaller steam driven water pumps and two large electrically driven centrifugal water pumps, all of which are for the purpose of supplying water to the people of the City of Lima.

"The progression of the installation of this apparatus was to a more modern and dependable service, and while but one electrically driven centrifugal water pump is necessary to furnish the average demand for water, which means that five (5) pumps would be left in reserve, I would not recommend that any apparatus or pumps be scrapped but left in position. It gives me confidence that we will always have water.

"The Water Department has three (3) main reservoirs, namely, Twin Lakes, Lima Lake and Lost Creek Lake. It may be argued that two (2) are sufficient, but personally I am glad there are three (3). All of the plant managers will say that they have confidence of maintaining service.

"Why do we use Natural Gas for enriching? The average water gas plant operates upon fixed principles from which it is difficult to deviate. The only difference of any consequence between the Lima plant and any other water gas plant is that the basic gas called 'blue-gas' is enriched [fol. 772] with 'gas-oil' in the other plants. Coke made from the (4) destructive distillation of bituminous coal is used as the source of carbon, which after attaining an incandescent state from 'blowing' is subject to a flow of steam, the resultant gas coming off as blue-gas and having a chemical composition of $CO+H_2$ and a B. T. U. of about 290 and is the basic gas in all carburetted water gas plants. This basic gas must be enriched to whatever is recommended in different locations, say an average of 550 as we have in Lima. To do this gas-oil is broken up in the machine and for every gallon so broken up the gas is enriched 80 (B. T. U.). To enrich to 550 would require 3.4 gallons of 'gas-oil' or its present substitute, fuel oil, of 32° to 36° Baume gravity, which was selling for about 6½¢ F. O. B. Lima.

"Our calculations showed that for enriching purposes there existed a ratio of one to ten, for natural gas compared to oil; that is ten cent natural gas equalled one cent oil and 50 cent natural gas equalled 5 cent oil, and that if we had to pay 55¢ for natural gas it would still benefit us in sev-

eral ways. We would have a comparatively cheap enricher, one that would not vary in quality; that we would reduce our demand to the point that the producer could probably furnish the necessary amount for enriching; also we would maintain a uniformity of B. T. U. that could not be maintained in an oil enriched gas plant.

"Let us enlarge upon this last. When oil is broken up for an enriching agent there is a certain amount of the final value that does not completely gasify and this value is lost in the form of condensates as it travels through a gas line and 550 B. T. U. gas that leaves a plant can lose 5% in traveling one mile. Especially is this true if the gas is compressed.

"The gas at the Lima plant is non-condensable because the different gases that make up the mixture are all basic as shown; carbon-monoxide (CO) hydrogen (H_2) methane [fol. 773] (CH_4) and ethane (C_2H_6).

(5) "We are only naming the combustible gases. There is in all commercial gas about four per cent carbon-dioxide (CO_2) and six per cent nitrogen (N_2) these latter two being non-combustible and are not affecting the usefulness of the gas nor the B. T. U. value.

"The fact that the natural gas enriched mixture produced at the Lima plant is basic gas means that 550 B. T. U. gas leaving the plant is 550 B. T. U. gas anywhere in the lines and continues so until it is burned in the appliances. Furthermore, if we settled upon a B. T. U. comparable with other plants we could always produce a uniform gas by running the necessary amount of oil in case of natural gas failure, to maintain the quality of gas and there would be no inconvenience to our customers. There have been occasions to put this in practice since it was adopted and there has never been a failure of the uniform quality, high value gas in our mains regardless of natural gas supply.

"We keep a reserve supply of high grade fuel oil for these emergencies and do not attempt to substitute crude oil because the resultant deposit of carbon and tar upon the checker work and refactories of the gas machine and the resultant poor control of gas manufacture would create an expense greater than any saving in the price of oil.

"The transmission line supplies enricher to the Lima plant at a cost comparable to the cost of oil for enriching and there would be no saving if it were abandoned, and by having this

line we are guaranteed a fixed price for our enricher, which we could not have if we depended on oil, for the fact that the price of oil varies and there is no guarantee. Another thing, if we didn't have this line we would have to build an additional oil storage for the fact of the matter is that Lima is [fol. 774] only charged for the proportion of that line that is used and useful to Lima.

(6) "Another big item in the proposition, if the line was abandoned as far as Lima is concerned, it couldn't be abandoned as far as our other properties are concerned. The 15 miles east of Kenton would have to be maintained for Kenton just the same and we would have to have a line to furnish gas to Cridersville, Wapakoneta, St. Marys, Celina, which extends 30 miles Southwest of Lima. Each one of these towns is charge- with the proportionate value of this transmission line in ratio to the quantity of gas used.

"Natural gas ($CH_4+C_2H_6$) has a specific gravity of .642. This gas was at one time delivered through mains in Lima at haphazard pressures, ranging from ½ to 16 oz. The wide variation of pressures was caused by an independable and fluctuating supply. The mains, of necessity could not be installed from an intelligent engineering standpoint because the base of all calculations was missing, that is, a fixed uniform pressure. Given a fixed pressure with a known specific gravity and a working idea of the number and kind of consumers and a good engineer can make a close estimate of the size of lines to lay. This data was obtainable except in the first instance.

"When changing to a different gas but of known predetermined pressure, also a change in the specific gravity, it was found advisable to combine a certain amount of main known as 'Artificial system,' tying the two together, at the same time cutting off and abandoning those parts unnecessary to good operation.

"The original mains in the streets of Lima were too small to serve all customers with a uniform supply at a uniform pressure and it would be necessary to tear up the streets and pavements and lay larger lines, or utilize the existing artificial mains by tying the two systems together. It was ob- [fol. 775] vious that the latter was the proper method. Even with this intertying of lines it is necessary to raise the pressure from the plant with compressing apparatus to give adequate service to the farther (7) customers. This double sys-

tem only occupies a relatively small portion of the city and it is located in the central part.

"Two purposes were accomplished by doing this, both from purely an operating standpoint. First, good operating dictates that pressures be carried as low as possible commensurate with good service. That pressure in Lima is considered proper at 3 oz. with not over 20% variation from peak to valley. The second purpose was to cut off all unnecessary mains so there would be no leakage from them. The loss from this standpoint would be greater than any gain from any other.

"An intelligent recording pressure survey has proven the first and the unaccounted-for gas figure has proven the second. I would hesitate to remove a single piece of main in Lima and be responsible for the change in uniformity of pressures.

"The only conclusion we can draw is that the different units in the whole form an aggregate that is both used and useful to the proper serving of gas to the customers.

Respectfully submitted, (Signed) R. L. Lynch, General Superintendent, West Ohio Gas Company.

[fol. 776] Filed May 3, 1930. The Public Utilities Commission of Ohio.

West Ohio Gas Company, Lima, Ohio

List of Meters

April 29, 1930.

Public Utilities Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

As requested by the Counsel of the City of Lima during the recent hearing of the Lima Rate Case, we are enclosing a statement showing the number of meters in service in the Lima district on January 1st, 1924, to 1930, inclusive.

Yours very truly, West Ohio Gas Company, by (Signed) F. L. Pringle, Asst. Treas.

FLP:AL.

[fol. 777] EXHIBIT No. —

Filed May 3, 1930. The Public Utilities Commission of Ohio

No. 5137

West Ohio Gas Company, Lima District

Number Meters in Service

Period Commencing—	Lima	Cridersville	Total
January 1, 1924	10,724	154	10,878
" 1925	11,955	163	12,118
" 1926	10,060	146	10,206
" 1927	10,218	145	10,363
" 1928	10,038	114	10,152
" 1929	10,045	122	10,167
" 1930	10,017	122	10,139

[fol. 778] Filed Nov. 21, 1929. The Public Utilities Commission of Ohio.

CITY'S EXHIBIT No. 5

Dillon

The West Ohio Gas Company

Valuation as of March 31, 1928—Allensworth's Reproduction Cost New—Company's Reproduction Cost—Collation

[fol. 779] The West Ohio Gas Company

Valuation as of March 31, 1928

Allensworth's Reproduction Cost New—Company's Reproduction Cost Collation

	Company's Reproduction Cost	Allensworth's Reproduction Cost	Excess of Company's over Allensworth's Reproduction Cost
Transmission System—			
Main	$548,525.00	$308,014.97	$240,510.03
Town Border Meter and Regulator Stations	2,227.30	2,077.50	149.80
Total	550,752.30	310,092.47	240,659.83
Manufacturing Plant—			
Land	115,000.00	115,000.00	.....
Buildings	87,069.20	87,069.20	.....
Apparatus	160,831.39	160,831.39	.....
Yard Structures	202,245.15	202,245.15	.....
Miscellaneous	46,936.87	46,936.87	.....
Total	612,082.61	612,082.61	.....

Allensworth's Reproduction Cost New—Company's Reproduction Cost Collation—Continued

	Reproduction Company's	Reproduction Allensworth's	Excess of Company's over Reproduction Allensworth's
Distribution System—			
Regulator Stations—			
Land	2,050.00	2,050.00	.....
Buildings	1,851.22	1,508.81	342.41
Contents	4,023.69	1,934.96	2,088.73
Mains, etc	781,915.78	670,911.71	111,004.07
Services	118,796.11	137,299.02	18,502.91*
House Governors	248.54	86.70	161.84
Meters in Service	137,530.80	123,857.99	13,672.81
Meters in Place—Locked	17,695.85	16,175.81	1,520.04
Tools	3,624.51	3,624.51	.....
Total	1,067,736.50	957,449.51	110,286.99
Construction Overhead—			
Charges	345,580.40	224,697.84	120,882.65
Office Furniture and Fixtures—			
Jointly Used	9,134.46	9,134.46	.....
Local	2,772.00	2,772.00	.....
Total	11,906.46	11,906.46	.....
Garage Equipment	6,422.88	6,422.88	.....
Proposed Office Site—			
Land	51,200.00	.....	51,200.00
Residence and Garage	13,500.00	.....	13,500.00
Total	64,700.00	.....	64,700.00
Total Physical Property	2,659,181.24	2,122,651.77	536,529.47
Working Capital	77,557.00	25,000.00	52,557.00
Materials and Supplies	27,527.70	14,563.18	12,964.52
Going Value	276,427.00	.....	276,427.00
Investment Bankers' Services	152,035.00	.....	152,035.00
Grand Total	$3,192,727.94	$2,162,214.95	$1,030,512.99

*Red in copy.

[fol. 780] CITY EXHIBIT 9-a

Filed April 1, 1930. The Public Utilities Commission of Ohio

City of Lima, Ohio

Dept. Water Works

Office of Supt. Filtration

Mr. I. C. Brower, City Manager, Lima, Ohio.

DEAR SIR:

The following results comprise all estimations of the heating value of gas as supplied at the Lima Water

Purification Plant. Results are expressed as British Thermal Units per cubic foot. A British Thermal Unit is the amount necessary to raise one pound of water one degree Fahrenheit.

Year 1922

March	2, 1020	April	3, 1019	May	6, 1041	June	5. 1012
"	7, 1010	"	14, 1024	"	12, 1018	"	12, 997
"	13, 1043	"	21, 1149	"	19, 1015	"	19, 1020
"	21, 989	"	26, 959	"	25, 1049	"	26, 996
"	29, 1002			"	31, 1025		
July	31, 1004	August	24, 998	September	11, 996	November	6, 1182

Year 1923

September	13, 600	October	6, 776
"	17, 734	"	24, 783

Year 1924

January	15, 483	February	3, 566	March	14, 570
"	16, 554	"	11, 520	"	30, 599
"	25, 559	"	19, 571		

Year 1929

April	28, 276	June	4, 479	June	13, 496	June	23, 476
"	30, 502	"	5, 510	"	14, 483	"	24, 456
May	7, 514	"	6, 477	"	15, 478	"	25, 464
"	11, 500	"	7, 487	"	16, 480	"	26, 464
"	15, 492	"	8, 494	"	18, 474	"	27, 463
"	18, 497	"	9, 483	"	19, 477	"	28, 454
"	21, 488	"	10, 474	"	20, 470	"	29, 468
"	22, 504	"	11, 456	"	21, 471	"	30, 454
"	23, 490	"	12, 474	"	22, 478		
"	24, 476						
"	25, 511						
"	26, 500						
"	31, 477						

Respectfully yours, E. E. Smith 2nd,
Superintendent of Filtration.

[fol. 781] CITY'S EX. 9-b

Filed Apr. 1, 1930. The Public Utilities Commission of Ohio

October 3, 1928.

Mr. Paul Landis, City Solicitor, Lima, Ohio.

DEAR SIR:

Below are given results of examinations of gas for heating value, as taken from service line at the Lima Water Purification Plant.

July, 1928

Date	B.T.U.	Date	B.T.U.	Date	B.T.U.
July 1	477	July 13	462	July 23	457
3	458	14	474	25	472
5	449	15	468	26	467
6	460	16	463	27	450
7	463	17	473	28	449
9	486	18	493	29	457
10	500	19	495	30	451
11	477	20	487	31	485
12	476	21	459		

August, 1928

Date	B.T.U.	Date	B.T.U.	Date	B.T.U.	Date	B.T.U.
Aug. 1	462	Aug. 9	483	Aug. 17	484	Aug. 24	440
2	472	10	478	18	447	25	446
3	496	11	462	19	440	26	444
4	491	12	487	20	456	27	475
5	476	13	463	21	460	28	457
6	478	14	466	22	413	29	458
7	502	16	488	22	452	30	455
8	482			23	464	31	454

September, 1928

Date	B.T.U.	Date	B.T.U.	Date	B.T.U.	Date	B.T.U.
Sept. 1	452	Sept. 9	448	Sept. 17	440	Sept. 25	457
2	462	10	464	18	432	26	481
3	452	11	476	19	427	27	518
4	438	12	483	20	444	27	513
5	433	13	454	21	459	28	484
6	438	14	462	22	445	29	476
7	454	15	468	23	436	30	508
8	432	16	454	24	442		

Superintendent of Filtration., Lima Water Works

[fol. 782]

City's Ex. 9-c

Filed Apr. 1, 1930. The Public Utilities Commission of Ohio

June 10, 1929.

Mr. Paul Landis, City Solicitor, Lima, Ohio.

Dear Sir:

Below are given results of examinations of gas for heating value, as taken from service line at the Lima Water Purification Plant.

October, 1928

Date	B.T.U.	Date	B.T.U.	Date	B.T.U.	Date	B.T.U.
Oct. 1	487	Oct. 9	479	Oct. 17	472	Oct. 25	460
2	509	10	500	18	450	26	...
3	498	11	498	19	465	27	...
4	484	12	518	20	439	28	...
5	519	13	513	21	463	29	...
6	471	14	472	22	478	30	406
7	490	15	462	23	490	31	406
8	478	16	478	24	500		

November, 1928

Date	B.T.U.	Date	B.T.U.	Date	B.T.U.	Date	B.T.U.
Nov. 1	406	Nov. 9	504	Nov. 17	477	Nov. 25	496
2	472	10	490	18	452	26	477
3	511	11	472	19	459	27	421
4	...	12	490	20	455	28	465
5	502	13	530	21	442	29	488
6	516	14	464	22	468	30	468
7	488	15	496	23	477		
8	441	16	480	24	487		

December, 1928

Date	B.T.U.	Date	B.T.U.	Date	B.T.U.	Date	B.T.U.
Dec. 1	484	Dec. 9	470	Dec. 17	474	Dec. 25	457
2	497	10	487	18	474	26	472
3	542	11	498	19	416	27	487
4	490	12	488	20	462	28	480
5	470	13	496	21	489	29	474
6	470	14	521	22	454	30	448
7	484	15	327	23	444	31	500
8	497	16	467	24	460		

Superintendent of Filtration., Lima Water Works

[fol. 783]

CITY'S EX. 9-d

Filed Apr. 1, 1930. The Public Utilities Commission of Ohio.

June 10, 1929.

Mr. Paul Landis, City Solicitor, Lima, Ohio.

DEAR SIR:

Below are given results of examinations of gas for heating value, as taken from service line at the Lima Water Purification Plant.

January, 1929

Date		B.T.U.	Date		B.T.U.	Date		B.T.U.	Date		B.T.U.
Jan.	1	453	Jan.	9	472	Jan.	17	...	Jan.	25	490
	2	476		10	490		18	...		26	510
	3	464		11	460		19	510		27	546
	4	468		12	438		20	502		28	484
	5	434		13	461		21	507		29	485
	6	449		14	413		22	430		30	482
	7	452		15	498		23	492		31	483
	8	494		16	471		24	483			

February ,1929

Feb.	1	482	Feb.	9	460	Feb.	17	482	Feb.	25	438
	2	488		10	493		18	518		26	500
	3	485		11	489		19	485		27	495
	4	520		12	489		20	478		28	490
	5	445		13	488		21	504			
	6	510		14	506		22	468			
	7	507		15	500		23	508			
	8	468		16	482		24	502			

March, 1929

Mar.	1	493	Mar.	9	475	Mar.	17	466	Mar.	25	461
	2	490		10	469		18	500		26	488
	3	499		11	489		19	468		27	477
	4	492		12	528		20	481		28	...
	5	488		13	458		21	471		29	...
	6	490		14	448		22	466		30	456
	7	472		15	491		23	466		31	487
	8	475		16	458		24	450			

Superintendent of Filtration, Lima Water Works.

[fol. 784] CITY'S EX. 9-e

Filed Apr. 1, 1930. The Public Utilities Commission of Ohio

June 10, 1929

Mr. Paul Landis, City Solicitor, Lima, Ohio.

DEAR SIR:

Below are given results of examinations of gas heating value, as taken from service line at the Lima Purification Plant.

Date	B.T.U.	Date	B.T.U.	Date	B.T.U.	Date	B.T.U.
			April, 1929				
Apr. 1	443	Apr. 9	434	Apr. 17	474	Apr. 25	453
2	458	10	443	18	440	26	461
3	478	11	441	19	418	27	440
4	423	12	452	20	442	28	425
5	464	13	454	21	433	29	441
6	466	14	440	22	420	30	447
7	500	15	443	23	444		
8	454	16	458	24	469		
			May, 1929				
May 1	441	May 9	464	May 17	436	May 25	442
2	451	10	440	18	450	26	432
3	422	11	434	19	426	27	441
4	426	12	455	20	450	28	450
5	434	13	429	21	443	29	464
6	442	14	438	22	437	30	465
7	446	15	450	23	440	31	475
8	424	16	446	24	442		

Monthly averages for a continuous year follows:

June,	1928	475	October,	1928	477	February,	1929	488
July,	1928	469	November,	1928	476	March,	1929	477
August,	1928	465	December,	1928	473	April,	1929	448
September,	1928	459	January,	1929	476	May,	1929	443

Annual average for the year under observation, 468 B.T.U.

Superintendent of Filtration, Lima Water Works.

[fol. 785] Filed, The Public Utilities Commission of Ohio. Received April 5, 1930, 10 A. M., Columbus, Ohio.

City Exhibit 10

Brown

Before The Public Utilities Commission of Ohio

No. 3413

In the Matter of the Petition of the West Ohio Gas Company to Discontinue the Service of Natural Gas in the City of Lima, and to Substitute Therefor the Service of Manufactured Gas

This day, after due notice by publication and otherwise, as required by law, and full hearing, including a further hearing granted upon the application of the City of Lima, Ohio, upon its representation that it had additional testimony which would show, or tend to show, that a new and adequate supply of natural gas had been developed and had

become available for distribution in the City of Lima at and about Coldwater, Ohio, this matter came on for final consideration upon the application of the West Ohio Gas Company for the authority of this Commission to discontinue the service of natural gas in the City of Lima, and to substitute therefor the service of manufactured gas; the record made upon said hearings, and the argument of counsel.

The Commission, being fully advised in the premises, and having made such independent inquiries and investigations as it deemed necessary and proper in the premises, finds:

That all available natural gas produced in the said Coldwater field has been contracted for sale to parties other than those who own or control the gas distribution plant in the City of Lima, Ohio;

That not only the present available supply of natural gas, but all probable production of such commodity in said Coldwater field, is and will be insufficient to furnish an adequate supply of natural gas for the use of the consumers of the said West Ohio Gas Company in said City;

That the present supply of natural gas available for distribution in said City of Lima is so limited and its continuance so questionable that the continuance of natural gas service in said City subjects the public health and welfare to an undue and unnecessary hazard;

That the contemplated substitution by the applicant of manufactured gas service for its said natural gas service in the City of Lima will be conducive to the public welfare, and

[fol. 786] That, therefore, the proposed discontinuance of natural gas service by the applicant in the City of Lima is reasonable,

and is satisfied that, effective upon the inauguration of manufactured gas service, consent and authority should be granted the applicant to discontinue the furnishing of natural gas service in the City of Lima, Ohio. It is, therefore,

Ordered, That, effective upon the inauguration of manufactured gas service, the said West Ohio Gas Company be, and hereby it is authorized to discontinue the furnishing of natural gas service in the City of Lima, Ohio. It is further

Ordered, That the objections filed herein be, and hereby the same are over-ruled.

The Public Utilities Commission of Ohio, Charles C. Marshall, Chairman; George T. Poor, Frank B. Maullar, Commissioners.

Dated at Columbus, Ohio, this 25th day of April, 1925.

A true copy:

J. B. Dugan, Acting Secretary.

[fol. 787] Filed Apr. 2, 1930. The Public Utilities Commission of Ohio.

CITY'S EXHIBIT 12

B. W.

No. 5137

The Public Utilities Commission of Ohio, Columbus

I, Ira E. Sprankle, the duly appointed and qualified Superintendent of Investigation of The Public Utilities Commission of Ohio, in whose custody the annual reports, books and records of the Commission are kept, do hereby certify that the attached is a true and correct copy of number of artificial and natural gas customers reported by the West Ohio Gas Company for the City of Lima, Ohio for the years ending December 31st, 1924, 1925, 1926, 1927, 1928 and 1929; also of the number of cubit feet of artificial gas and natural gas distributed by the West Ohio Gas Company (entire company) for the years ending December 31st, 1924, 1925, 1926, 1927, 1928 and 1929; all of which is taken from the annual reports of said company filed with The Public Utilities Commission of Ohio for said years.

In testimony whereof, I have hereunto set my hand and affixed the official seal of The Public Utilities Commission of Ohio, this 2nd day of April, A. D., 1930.

Ira E. Sprankle, Superintendent of Investigation, The Public Utilities Commission of Ohio. [Seal, The Public Utilities Commission of Ohio.]

[fol. 788] Following is List of Consumers Reported by the West Ohio Gas Company for the City of Lima, Ohio

	Artificial Gas Customers	Natural Gas Customers
Year ending Dec. 31, 1924	.....	14,984
Year ending Dec. 31, 1925	10,060	.....
Year ending Dec. 31, 1926	10,363	.....
Year ending Dec. 31, 1927	10,038	.....
Year ending Dec. 31, 1928	10,045	.....
Year ending Dec. 31, 1929	10,139	.....

Following Is Amount of Artificial and Natural Gas Distributed by the West Ohio Gas Company as Reported for the Entire Company

	Artificial Gas Distributed Cu. Ft.	Natural Gas Distributed Cu. Ft.
Year ending Dec. 31, 1924	.....	48,423,400
Year ending Dec. 31, 1925	378,405,500	169,845,000
Year ending Dec. 31, 1926	381,803,400	188,431,200
Year ending Dec. 31, 1927	382,754,000	158,369,200
Year ending Dec. 31, 1928	404,189,900	156,882,700
Year ending Dec. 31, 1929	408,087,500	160,988,700

NOTE.—The distribution of gas shown above does not include gas used by the Company.

[fol. 788a] Filed July 12, 1932. The Public Utilities Commission of Ohio.

CITY EXHIBIT A-1

Case No. 5137

[fol. 789]

CITY'S EX. A-1

West Ohio Gas Company

Detailed Statement Midland United Company Services Rendered Year Ended December 31, 1931

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
Secretarial Department	$19.88	$12.20	$26.56	$28.41	$54.73	$18.12	$1.25	$20.99	$24.80	$16.49	$1.13	$22.59	$247.15
Treasury	7.09	18.84	14.06	11.53	17.58	28.58	20.45	21.27	37.74	27.39	33.82	20.72	259.09
Accounting	2.79	6.52	.....	15.10	14.61	13.76	.....	8.24	78.83	14.97	.....	.....	154.82
Statistical	119.77	54.15	49.63	41.37	56.54	40.26	206.00	47.47	155.60	121.84	160.29	51.36	1,104.28
Operating Budget	11.33	17.17	25.10	21.51	19.08	18.03	10.62	6.89	14.95	16.79	18.74	16.38	196.59
Construction	7.55	17.17	21.51	17.93	15.27	18.03	7.08	10.33	18.69	20.99	23.43	20.45	198.43
Publicity and Advertising	225.48	131.60	109.14	110.74	115.56	55.60	107.86	109.67	98.81	68.07	103.96	95.62	1,332.11
Engineering	194.76	162.76	87.01	119.71	98.13	222.14	57.42	153.33	158.36	135.43	172.68	137.77	1,699.50
Miscellaneous Departmental	120.19	79.56	169.84	122.38	91.21	76.13	162.95	53.56	86.26	96.94	67.43	57.08	1,183.53
Traveling Expenses—Gas Engineer	.....	.....	.....	.....	.....	39.71	6.50	20.15	.....	.....	.....	.....	56.36
Traveling Expenses—Oper. Engineer	18.51	.....	.....	.....	.....	.....	.....	.....	.....	25.83	.....	.....	44.34
Traveling Expenses—Accountants	1.80	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1.80
Traveling Expenses—Statistician	19.42	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	19.42
Traveling Expenses—Executive	.....	20.18	19.50	.....	5.00	.....	17.85	.....	5.00	.....	60.40	.....	127.93
	$748.57	$520.15	$522.35	$488.68	$487.71	$520.36	$597.98	$451.92	$679.04	$544.74	$641.88	$421.97	$6,625.35

[fol. 789a] CITY'S EXHIBIT A-2

Case No. 5137

[fol. 790] CITY'S EXHIBIT A-2

West Ohio Gas Company

Comparative Statement Industrial and House Heating Gas Sales, Years 1927-1931 (Inc.)

Industrial

Year	Number customers	Total cubic feet sold
1927	20	9,941,200
1928	35	26,934,600
1929	37	28,035,400
1930	35	26,687,200
1931	30	32,320,000

House Heating

Year	Number customers	Total cubic feet sold
1927	6	2,698,800
1928	10	5,706,400
1929	15	9,086,000
1930	30	12,489,200
1931	26	10,409,000

[fols. 791-798] CITY EXH. A-3

#5137

West Ohio Gas Company, City of Lima

Projected Income Statement

Average Year Since Effective Date of Ordinance No. 2675

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	381,153.4	.....
Revenue	$384,555.19	100.9¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 35¢ per m.c.f.)	113,064.44	29.7
Distribution Expense	39,810.72	10.4
Commercial Expense	20,498.87	5.4
New Business Expense	12,901.29	3.4

General and Miscellaneous Expense	37,028.32	9.7
Indirect Construction Charges	(3,972.75)	(1.0)
Uncollectible Accounts	2,412.18	0.6
Total Operating Expense before Depreciation, Taxes and Return	221,743.07	58.2
Income Available for Depreciation, Taxes and Return	162,812.12	42.7
Depreciation	35,579.32	9.3
Taxes—		
Real and Personal Property Tax	20,865.09	5.5
Excise Tax @ 1.35%	5,191.50	1.4
Public Utility Commission Maintenance Tax	200.10	.....
Federal Income Tax	6,575.13	1.7
Total Taxes	32,831.82	8.6
Total Income Deductions	68,411.14	17.9
Available for Return on Investment	$94,400.98	24.8¢

[fol. 799] West Ohio Gas Company, City of Lima

Projected Operating Statements

Rates Fixed by Ordinance No. 2675

Year ending March 31, 1928.
Nine Months ending December 31, 1928.
Calendar Year 1929.
Calendar Year 1930.
Calendar Year 1931.
Three Years and Nine Months ending December 31, 1931.

[fol. 800] West Ohio Gas Company, City of Lima

Projected Operating Statement Rates Fixed by Ordinance No. 2675

Year Ending March 31, 1928

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	376,681.8	.....
Revenue Under Ordinance Rates	$295,318.53	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 35¢ per m.c.f.)	122,842.56	32.6
Distribution Expense	42,116.04	11.2
Commercial Expense	22,143.79	5.9
New Business Expense	8,819.22	2.3
General and Miscellaneous Expense	32,365.21	8.6
Indirect Construction Charges	(2,798.48)	(0.7)
Uncollectible Accounts	2,710.11	0.7
Total Operating Expense before Depreciation, Taxes and Return	228,198.45	60.6

Income Available for Depreciation, Taxes and Return	67,120.08	17.8
Depreciation	35,579.32	9.4
Taxes—		
Real and Personal Property Tax	21,776.07	5.8
Excise Tax @ 1.35%	3,986.80	1.1
Public Utility Commission Maintenance Tax	156.82	.....
Federal Income Tax	.....	.....
Total Taxes	25,919.69	6.9
Total Income Deductions	61,499.01	16.3
Available for Return on Investment	$5,621.07	1.5¢

[fol. 801] West Ohio Gas Company, City of Lima

Projected Operating Statement Rates Fixed by Ordinance No. 2675

Nine Months Ending December 31, 1928

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f	301,688.9	.....
Revenue Under Ordinance Rates	$236,524.10	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 35¢ per m.c.f.)	83,591.91	27.7
Distribution Expense	31,690.49	10.5
Commercial Expense	16,094.31	5.3
New Business Expense	8,047.63	2.7
General and Miscellaneous Expense	26,225.78	8.7
Indirect Construction Charges	(1,538.64)	(0.5)
Uncollectible Accounts	2,119.31	0.7
Total Operating Expense before Depreciation, Taxes and Return	166,230.79	55.1
Income Available for Depreciation, Taxes and Return	70,293.31	23.3
Depreciation	26,684.49	8.8
Taxes—		
Real and Personal Property Tax	16,011.66	5.3
Excise Tax @ 1.35%	3,193.08	1.1
Public Utility Commission Maintenance Tax	126.34	.....
Federal Income Tax	.....	.....
Total Taxes	19,331.08	6.4
Total Income Deductions	46,015.57	15.2
Available for Return on Investment	$24,277.74	8.1¢

[fol. 802] West Ohio Gas Company, City of Lima

Projected Operating Statement Rates Fixed by Ordinance No. 2675

Calendar Year 1929

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	398,307.9	.....
Revenue under Ordinance Rates	$312,273.39	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ per m.c.f.)	120,103.42	30.2
Distribution Expense	41,728.45	10.5
Commercial Expense	21,707.67	5.4
New Business Expense	13,420.25	3.4
General and Miscellaneous Expense	40,450.17	10.1
Indirect Construction Charges	(2,579.37)	(0.6)
Uncollectible Accounts	2,675.55	0.6
Total Operating Expense before Depreciation, Taxes and Return	237,506.14	59.6
Income Available for Depreciation, Taxes and Return	74,767.25	18.8
Depreciation	35,579.32	8.9
Taxes—		
Real and Personal Property Tax	22,536.56	5.7
Excise Tax @ 1.35%	4,215.69	1.1
Public Utility Commission Maintenance Tax	160.07	.....
Federal Income Tax	.....	.....
Total Taxes	26,912.32	6.8
Total Income Deductions	62,491.64	15.7
Available for Return on Investment	$12,275.61	3.1¢

[fol. 803] West Ohio Gas Company, City of Lima

Projected Operating Statement Rates Fixed by Ordinance No. 2675

Calendar Year 1930

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	378,532.7	.....
Revenue Under Ordinance Rates	$296,769.64	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 35¢ per m.c.f.)	113,520.41	30.0
Distribution Expense	36,602.29	9.7
Commercial Expense	20,223.84	5.3
New Business Expense	13,440.61	3.5
General and Miscellaneous	37,811.55	10.0
Indirect Construction Charges	(8,378.50)	(2.2)
Uncollectible Accounts	2,219.70	0.6
Total Operating Expense before Depreciation, Taxes and Return	215,439.90	56.9
Income Available for Depreciation, Taxes and Return	81,329.74	21.5
Depreciation	35,579.32	9.4

Taxes—	Amount	Cents Per m.c.f.
Real and Personal Property Tax	21,988.47	5.8
Excise Tax @ 1.35%	4,006.39	1.1
Public Utility Commission Maintenance Tax	145.33	.....
Federal Income Tax	.....	.....
Total Taxes	26,140.19	6.9
Total Income Deductions	61,719.51	16.3
Available for Return on Investment	$19,610.23	5.2¢

[fol. 804] West Ohio Gas Company, City of Lima

Projected Operating Statement Rates Fixed by Ordinance No. 2675

Calendar Year 1931

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f	350,795.9	.....
Revenue Under Ordinance Rates	$275,023.99	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 35¢ per m.c.f.)	106,440.26	30.3
Distribution Expense	39,240.83	11.2
Commercial Expense	18,838.48	5.4
New Business Expense	13,457.80	3.8
General and Miscellaneous	34,347.96	9.8
Indirect Construction Charges	(2,398.83)	(0.7)
Uncollectible Accounts	2,031.51	0.6
Total Operating Expense before Depreciation, Taxes and Return	211,958.01	60.4
Income Available for Depreciation, Taxes and Return	63,065.98	18.0
Depreciation	35,579 32	10.1
Taxes—		
Real and Personal Property Tax	17,774.68	5.1
Excise Tax @ 1.35%	3,712.82	1.1
Public Utility Commission Maintenance Tax	151.21	.....
Federal Income Tax	.....	.....
Total Taxes	21,638.71	6.2
Total Income Deductions	57,218.03	16.3
Available for Return on Investment	$5,847.95	1.7¢

[fol. 805] West Ohio Gas Company, City of Lima

Projected Operating Statement Rates Fixed by Ordinance No. 2675

Three Years and Nine Months Ending December 31, 1931

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f	1,429,325.4	.....
Revenue Under Ordinance Rates	$1,120,591.11	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 35¢ per m.c.f.)	423,991.64	29.7
Distribution Expense	149,290.21	10.4
Commercial Expense	76,870.74	5.4
New Business Expense	48,379.85	3.4
General and Miscellaneous Expense	138,856.20	9.7

	Amount	Cents Per m.c.f.
Indirect Construction Charges	(14,897.79)	(1.0)
Uncollectible Accounts	9,045.67	0.6
Total Operating Expense before Depreciation, Taxes and Return	831,536.52	58.2
Income Available for Depreciation, Taxes and Return	289,054.59	20.2
Depreciation	133,422.45	9.3
Taxes—		
Real and Personal Property Tax	78,244.45	5.5
Excise Tax @ 1.35%	15,127.98	1.1
Public Utility Commission Maintenance Tax	582.95	.....
Federal Income Tax	.....	.....
Total Taxes	93,955.00	6.6
Total Income Deductions	227,377.45	15.9
Available for Return on Investment	$61,677.14	4.3¢

[fol. 806] West Ohio Gas Company, City of Lima

Operating Statements

Year ending March 31, 1928.
Nine Months ending December 31, 1928.
Calendar Year 1929.
Calendar Year 1930.
Calendar Year 1931.
Three Years and Nine Months ending December 31, 1931.

[fol. 807] West Ohio Gas Company, City of Lima

Operating Statement

Year Ending March 31, 1928

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	376,681.8	.....
Revenue	$433,888.34	115.2¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	163,890.75	43.5
Distribution Expense	42,116.04	11.2
Commercial Expense	22,143.79	5.9
New Business Expense	8,819.22	2.3
General and Miscellaneous Expense	32,365.21	8.6
Indirect Construction Charges	(2,798.43)	(0.7)
Uncollectible Accounts	2,710.11	0.7
Total Operating Expense before Depreciation, Taxes and Return	269,246.64	71.5
Income Available for Depreciation, Taxes and Return	164,641.70	43.7
Depreciation	25,579.32	9.4

Taxes—	Amount	Cents Per m.c.f.
Real and Personal Property Tax	21,776.07	5.8
Excise Tax @ 1.35%	5,857.49	1.6
Public Utility Commission Maintenance Tax	230.41	.....
Federal Income Tax	6,797.43	1.8
Total Taxes	34,661.40	9.2
Total Income Deductions	70,240.72	18.6
Availabl for Return on Investment	$94,400.98	25.1¢

[fol. 808] West Ohio Gas Company, City of Lima

Operating Statement

Nine Months Ending December 31, 1928

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f	301,688.9	.....
Revenue	$312,334.54	103.5¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	106,716.56	35.4
Distribution Expense	31,690.49	10.5
Commercial Expense	16,094.31	5.3
New Business Expense	8,047.63	2.7
General and Miscellaneous Expense	26,225.78	8.7
Indirect Construction Charges	(1,538.64	(0.5)
Uncollectible Accounts	2,119.31	0.7
Total Operating Expense before Depreciation, Taxes and Return	189,355.44	62.8
Income Available for Depreciation, Taxes and Return	122,979.10	40.7
Depreciation	26,684.49	8.8
Taxes—		
Real and Personal Property Tax	16,011.66	5.3
Excise Tax @ 1.35%	4,216.52	1.4
Public Utility Commission Maintenance Tax	166.83	.....
Federal Income Tax	5,098.86	1.7
Total Taxes	25,493.87	8.4
Total Income Deductions	52,178.36	17.2
Available for Return on Investment	$70,800.74	23.5¢

[fol. 809] West Ohio Gas Company, City of Lima

Operating Statement

Calendar Year 1929

	Amount	Cents Per m.c.f.
Gas Sold m.c.f	398,307.9	.....
Revenue	$438,223.12	110.0¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	155,078.22	39.0
Distribution Expense	41,728.45	10.5
Commercial Expense	21,707.67	5.4

	Amount	Cents Per m.c.f.
New Business Expense	13,420.25	3.4
General and Miscellaneous Expense	40,450.17	10.1
Indirect Construction Charges	(2,579.37)	(0.6)
Uncollectible Accounts	2,675.55	0.6
Total Operating Expense before Depreciation, Taxes and Return	272,480.94	68.4
Income Available for Depreciation, Taxes and Return	165,742.19	41.6
Depreciation	35,579.32	8.9
Taxes—		
Real and Personal Property Tax	22,536.56	5.7
Excise Tax @ 1.35%	5,916.01	1.5
Public Utility Commission Maintenance Tax	224.64	.....
Federal Income Tax	7,084.68	1.8
Total Taxes	35,761.89	9.0
Total Income Deductions	71,341.21	17.9
Available for Return on Investment	$94,400.98	23.7¢

[fol. 810] West Ohio Gas Company, City of Lima

Operating Statement

Calendar Year 1930

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	378,532.7	.....
Revenue	$415,908.63	109.9¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	149,748.78	39.6
Distribution Expense	36,602.29	9.7
Commercial Expense	20,223.84	5.3
New Business Expense	13,440.61	3.5
General and Miscellaneous Expense	37,811.55	10.0
Indirect Construction Charges	(8,378.50)	(2.2)
Uncollectible Accounts	2,219.70	0.6
Total Operating Expense before Depreciation, Taxes and Return	251,668.27	66.5
Income Available for Depreciation, Taxes and Return	164,240.36	43.4
Depreciation	35,579.32	9.4
Taxes—		
Real and Personal Property Tax	21,988.47	5.8
Excise Tax @ 1.35%	5,614.77	1.5
Public Utility Commission Maintenance Tax	203.67	.....
Federal Income Tax	6,453.15	1.7
Total Taxes	34,260.06	9.0
Total Income Deductions	69,839.38	18.4
Available for Return on Investment	$94,400.98	25.0¢

[fol. 811] West Ohio Gas Company, City of Lima

Operating Statement

Calendar Year 1931

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	350,795.9	.....
Revenue	$404,288.84	115.3¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	139,315.87	39.7
Distribution Expense	39,240.83	11.2
Commercial Expense	18,838.48	5.4
New Business Expense	13,457.80	3.8
General and Miscellaneous Expense	34,347.96	9.6
Indirect Construction Charges	(2,398.83)	(0.7)
Uncollectible Accounts	2,031.51	0.6
Total Operating Expense before Depreciation, Taxes and Return	244,833.62	69.8
Income Available for Depreciation, Taxes and Return	159,455.22	45.5
Depreciation	35,579.32	10.1
Taxes—		
Real and Personal Property Tax	17,774.68	5.1
Excise Tax @ 1.35%	5,457.90	1.6
Public Utility Commission Maintenance Tax	222.28	0.1
Federal Income Tax	6,020.06	1.7
Total Taxes	29,474.92	8.5
Total Income Deductions	65,054.24	18.6
Available for Return on Investment	$94,400.98	26.9¢

[fol. 812] West Ohio Gas Company, City of Lima

Operating Statement

Three Years and Nine Months Ending December 31, 1921

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	1,429,325.4	.....
Revenue	$1,571,365.88	109.9¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	551,433.19	38.6
Distribution Expense	149,290.21	10.4
Commercial Expense	76,870.74	5.4
New Business Expense	48,379.85	3.4
General and Miscellaneous Expense	138,856.20	9.7
Indirect Construction Charges	(14,897.79)	(1.0)
Uncollectible Accounts	9,045.67	0.6
Total Operating Expense before Depreciation, Taxes and Return	959,008.07	67.1
Income Available for Depreciation, Taxes and Return	612,357.81	42.8
Depreciation	133,422.45	9.3

	Amount	Cents Per m.c.f.
Taxes—		
Real and Personal Property Tax	78,244.07	5.5
Excise Tax @ 1.35%	21,213.44	1.5
Public Utility Commission Maintenance Tax	817.42	.....
Federal Income Tax	24,656.75	1.7
Total Taxes	124,931.68	8.7
Total Income Deductions	258,354.13	18.0
Available for Return on Investment	354,003.68	24.8¢

[fol. 813] West Ohio Gas Company, City of Lima

Operating Statements

Rates Fixed by Ordinance No. 2675

Year ending March 3, 1928.
Nine Months ending December 31, 1928.
Calendar Year 1929.
Calendar Year 1930.
Calendar Year 1931.
Three Years and Nine Months ending December 31, 1931.

[fol. 814] West Ohio Gas Company, City of Lima

Operating Statement

Rates Fixed by Ordinance No. 2675

Year Ending March 31, 1928

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f	376,681.8	.....
Revenue Under Ordinance Rates	$295,318.53	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	163,890.75	43.5
Distribution Expense	42,116.04	11.2
Commercial Expense	22,143.79	5.9
New Business Expense	8,819.22	2.3
General and Miscellaneous Expense	32,365.21	8.6
Indirect Construction Charges	(2,798.48)	(0.7)
Uncollectible Accounts	2,710.11	0.7
Total Operating Expense before Depreciation, Taxes and Return	269,246.64	71.5
Income Available for Depreciation, Taxes and Return	26,071.89	6.9
	35,579.32	9.4
Depreciation	21,776.07	5.8
Real and Personal Property Tax	3,986.80	1.1
Excise Tax @ 1.35%	156.82	.....
Public Utility Commission Maintenance Tax	.....	.....
Federal Income Tax		
Total Taxes	25,919.69	6.9
Total Income Deductions	61,499.01	16.3
Available for Return on Investment	($35,427.12)	9.4¢

[fol. 815] West Ohio Gas Company, City of Lima

Operating Statement

Rates Fixed by Ordinance No. 2675

Nine Months Ending December 31, 1928

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f	301,688.9	.....
Revenue Under Ordinance Rates	$236,524.10	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	106,716.56	35.4
Distribution Expense	31,690.49	10.5
Commercial Expense	16,094.31	5.3
New Business Expense	8,047.63	2.7
General and Miscellaneous Expense	26,225.78	8.7
Indirect Construction Charges	(1,538.64)	(0.5)
Uncollectible Accounts	2,119.31	0.7
Total Operating Expense before Depreciation, Taxes and Return	189,355.44	62.8
Income Available for Depreciation, Taxes and Return	47,168.66	15.6
Depreciation	26,684.49	8.8
Taxes—		
Real and Personal Property Tax	16,011.66	5.3
Excise Tax @ 1.35%	3,193.08	1.1
Public Utility Commission Maintenance Tax	126.34	.....
Federal Income Tax	.....	.....
Total Tax	19,331.08	6.4
Total Income Deductions	46,015.57	15.2
Available for Return on Investment	$1,153.09	0.4¢

[fol. 816] West Ohio Gas Company, City of Lima

Operating Statement

Rates Fixed by Ordinance No. 2675

Calendar Year 1929

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f	398,307.9	.....
Revenue Under Ordinance Rates	$312,273.39	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	155,078.22	39.0
Distribution Expense	41,728.45	10.5
Commercial Expense	21,707.67	5.4
New Business Expense	13,420.25	3.4
General and Miscellaneous Expense	40,450.17	10.0
Indirect Construction Charges	(2,579.37)	(0.6)
Uncollectible Accounts	2,675.55	0.6
Total Operating Expense before Depreciation, Taxes and Return	272,480.94	68.4
Income Available for Depreciation, Taxes and Return	39,792.45	10.0
Depreciation	35,579.32	8.9

Taxes—	Amount	Cents Per m.c.f.
Real and Personal Property Tax	22,536.56	5.7
Excise Tax @ 1.35%	4,215.69	1.1
Public Utility Commission Maintenance Tax	160.07	.....
Federal Income Tax	.....	.....
Total Tax	26,912.32	6.8
Total Income Deductions	62,491.64	15.7
Available for Return on Investment	($22,699.19)	(5.7)

[fol. 817] West Ohio Gas Company, City of Lima

Operating Statement

Rates Fixed by Ordinance No. 2675

Calendar Year 1930

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	378,532.7	.....
Revenue Under Ordinance Rates	$296,769.64	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	149,748.78	39.6
Distribution Expense	36,602.29	9.7
Commercial Expense	20,223.84	5.3
New Business Expense	13,440.61	5.3
General and Miscellaneous Expense	37,811.55	10.0
Indirect Construction Charges	(8,378.50)	(2.2)
Uncollectible Accounts	2,219.70	0.6
Total Operating Expense before Depreciation, Taxes and Return	251,668.27	66.5
Income Available for Depreciation, Taxes and Return	45,101.37	11.9
Depreciation	35,579.32	9.4
Taxes—		
Real and Personal Property Tax	21,988.47	5.8
Excise Tax @ 1.35%	4,006.39	1.1
Public Utility Commission Maintenance Tax	145.33	.....
Federal Income Tax	.....	.....
Total Taxes	26,140.19	16.3
Total Income Deductions	61,719.51	6.9
Available for Return on Investment	($16,618.14)	(4.4¢)

[fol. 818] West Ohio Gas Company, City of Lima

Operating Statement

Rates Fixed by Ordinance No. 2675

Calendar Year 1931

	Amount	Cents Per m.c.f.
Gas Sold—m.c.f.	350,795.9	.....
Revenue Under Ordinance Rates	$275,023.99	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	139,315.87	39.7
Distribution Expense	39,240.83	11.2

	Amount	Cents Per m.c.f.
Commercial Expense	18,838.48	5.4
New Business Expense	13,457.80	3.8
General and Miscellaneous Expense	34,347.96	9.8
Indirect Construction Charges	(2,398.83)	(0.7)
Uncollectible Accounts	2,031.51	0.6
Total Operating Expense before Depreciation, Taxes and Return	244,833.62	69.8
Income Available for Depreciation, Taxes and Return	30,190.37	8.6
Depreciation	35,579.32	10.1
Taxes—		
Real and Personal Property Tax	17,774.68	15.
Excise Tax @ 1.35%	3,712.82	1.1
Public Utility Commission Maintenance Tax	151.21	.....
Federal Income Tax	.....	.....
Total Taxes	21,638.71	6.2
Total Income Deductions	57,128.03	16.3
Available for Return on Investment	($27,027.66)	(7.7¢)

[fols. 819-826] West Ohio Gas Company, City of Lima

Operating Statement

Rates Fixed by Ordinance No. 2675

Three Years and Nine Months Ending December 31, 1931

	Amount	Cents Per m.c.f.
Gas Sold—m.cf.	1,429,325.4	.....
Revenue Under Ordinance Rates	$1,120,591.11	78.4¢
Operating Expenses—		
Cost of Gas Sold (Nat'l Gas @ 55¢ per m.c.f.)	551,463.19	38.6
Distribution Expense	149,290.21	10.4
Commercial Expense	76,870.74	5.4
New Business Expense	48,379.85	3.4
General and Miscellaneous Expense	138,856.20	9.7
Indirect Construction Charges	(14,897.79)	(1.0)
Uncollectible Accounts	9,045.67	0.6
Total Operating Expense before Depreciation, Taxes and Return	959,008.07	67.1
Income Available for Depreciation, Taxes and Return	161,583.04	11.3
Depreciation	133,422.45	9.3
Taxes—		
Real and Personal Property Tax	78,244.07	5.5
Excise Tax @ 1.35%	15,127.98	1.1
Public Utility Commission Maintenance Tax	582.95	.....
Federal Income Tax	.....	.....
Total taxes	93,955.00	6.6
Total Income Deductions	227,377.45	15.9
Available for Return on Investment	($65,794.41)	(4.6)

[fol. 827] West Ohio Gas Company, City of Lima

Cost of Producing Mixed Gas Sold

Natural Gas Purchases @ 55¢ per M. C. F.

Year ending March 31, 1928.
Nine Months ending December 31, 1928.
Calendar Year 1929.
Calendar Year 1930.
Calendar Year 1931.
Three Years and Nine Months ending December 31, 1931.

[fol. 828] West Ohio Gas Company, City of Lima

Operating Expenses—Production Cost Mixed Gas—Natural Gas Purchases @ 55¢ per M. C. F.

Year Ending March 31, 1928

	M.c.f.	Cents per m.c.f.	Money
Natural Gas Purchased—Total Lima District	214,201.843	55.000¢	$117,811.01
Transmission Expense East of Lima	.....	.....	.....
Total Cost of Purchased Gas	214,201.843	55.000	117,811.01
Less: Nat'l Gas Purchased for Cridersville.	3,028.629	55.000	1,665.74
Nat'l Gas Sold Lima Suburban	5,850.600	55.000	3,217.83
Total Deduction	8,879.229	55.000	4,883.57
Natural Gas Used in Mixed Gas	205,322.614	55.000	112,927.44
Water Gas Produced	232,015.000	27.028	62,708.98
Holder Stock Adjustments	(57.000)	.....	(24.20)
Duplicate Production Charges	.....	.....	(11,656.21)
Total Mixed Gas Available for Delivery	437,280.614	37.494	163,956.01
Less: Unaccounted for Gas (excl. Cridersville)	37,756.614	.....	.....
Gas Used in Operation	22,692.200	.....	.....
Total Deduction	60,448.814	.....	.....
Total Mixed Gas Sold	376,831.800	43.509	163,956.01
Less: Sales to Lima Suburban	150.000	43.509	65.26
Sales to Delphos	.....	.....	.....
Sales to Towns North	.....	.....	.....
Total Mixed Gas Sold outside Lima	150.000	43.509	65.26
Total Mixed Gas Sold in City of Lima	376,681.800	43.509¢	$163,890.75

[fol. 829] West Ohio Gas Company, City of Lima

Operating Expenses—Production Cost Mixed Gas—Natural Gas Purchases @ 55¢ per M. C. F.

Nine Months Ending December 31, 1928

	M.c.f.	Cents per m.c.f.	Money
Natural Gas Purchased—Total Lima District	122,328.374	55.000¢	$67,280.61
Transmission Expense East of Lima	.....	.....	.....
Total Cost of Purchased Gas	122,328.374	55.000	67,280.61
Less: Nat'l Gas Purchased for Cridersville.	1,968.341	55.000	1,082.59
Nat'l Gas Sold Lima Suburban	4,499.500	55.000	2,474.73
Total Deduction	6,467.841	55.000	3,557.32
Natural Gas Used in Mixed Gas	115,860.533	55.000	63,723.29
Water Gas Produced	194,457.000	22.403	43,564.01
Holder Stock Adjustment	56.000	.....	23.79
Duplicate Production Charges	.....	.....	(375.57)
Total Mixed Gas Available for Delivery	310,373.533	34.454	106,935.52
Less: Unaccounted for Gas (excl. Cridersville)	6,660.333	.....	.....
Gas Used in Operation	1,405.300	.....	.....
Total Deduction	8,065.633	.....	.....
Total Mixed Gas Sold	302,307.900	35.373	106,935.52
Less: Sales to Lima Suburban	619.000	35.373	218.96
Sales to Delphos	.....	.....	.....
Sales to Towns North	.....	.....	.....
Total Mixed Gas Sold outside Lima	619.000	35.373	218.96
Total Mixed Gas Sold in City of Lima	301,688.900	35.373¢	$106,716.56

[fol. 830] West Ohio Gas Company, City of Lima

Operating Expenses—Production Cost Mixed Gas—Natural Gas Purchases @ 55¢ per M. C. F.

Calendar Year 1929

	M.c.f.	Cents per m.c.f.	Money
Natural Gas Purchased—Total Lima District	184,287.886	55.000¢	$101,358.34
Transmission Expense East of Lima	.....	.....	.....
Total Cost of Purchased Gas	184,287.886	55.000	101,358.34
Less: Nat'l Gas Purchased for Cridersville.	2,530.513	55.000	1,391.78
Nat'l Gas Sold Lima Suburban	6,365.600	55.000	3,501.08
Total Deduction	8,896.113	55.000	4,892.86
Natural Gas Used in Mixed Gas	175,391.773	55.000	96,465.48
Water Gas Produced	267,541.000	22.330	59,740.25

	M.c.f.	Cents per m.c.f.	Money
Holder Stock Adjustment	14.000	.....	55.14
Duplicate Production Charges	.....	.....	(723.46)
Total Mixed Gas Available for Delivery	442,946.773	35.114	155,537.41
Less: Unaccounted for Gas (excl. Cridersville)	39,274.173	.....	.....
Gas Used in Operation	4,185.300	.....	.....
Total Deduction	43,459.473	.....	.....
Total Mixed Gas Sold	399,487.300	38.934	155,537.41
Less: Sales to Lima Suburban	1,179.400	38.934	459.19
Sales to Delphos	.....	.....	.....
Sales to Towns North	.....	.....	.....
Total Mixed Gas Sold outside Lima	1,179.400	38.934	459.19
Total Mixed Gas Sold in City of Lima	398,307.900	38.934¢	$155,078.22

[fol. 831] West Ohio Gas Company, City of Lima

Operating Expenses—Production Cost Mixed Gas Natural Gas Purchases @ 55¢ per M.C.F.

Calendar Year 1930

	M.c.f.	Cents per m.c.f.	Money
Natural Gas Purchased—Total Lima District	197,481.845	55.000¢	$108,614.99
Transmission Expense East of Lima	.....	0.353	696.89
Total Cost of Purchased Gas	197,481.845	55.353	109,311.88
Less: Nat'l Gas Purchased for Cridersville	4,884.793	55.353	2,703.87
Nat'l Gas Sold Lima Suburban	6,410.200	55.353	3,548.23
Total Deduction	11,294.993	55.353	6,252.10
Natural Gas Used in Mixed Gas	186,186.852	55.353	103,059.78
Water Gas Produced	250,984.000	20.431	51,278.57
Holder Stock Adjustment	(174.000)	.....	(73.50)
Duplicate Production Charges	.....	.....	(345.50)
Total Mixed Gas Available for Delivery	436,996.852	35.222	153,919.35
Less: Unaccounted for Gas (excl. Cridersville)	43,081.852	.....	.....
Gas Used in Operation	4,840.000	.....	.....
Total Deduction	47,921.852	.....	.....
Total Mixed Gas Sold	389,075.000	39.560	153,919.35
Less: Sales to Lima Suburban	1,408.400	39.560	557.17
Sales to Delphos	7,899.000	39.560	3,124.87
Sales to Towns North	1,234.900	39.560	488.53
Total Mixed Gas Sold outside Lima	10,542.300	39.560	4,170.57
Total Mixed Gas Sold in City of Lima	378,532.700	39.560¢	$149,748.78

[fol. 832] West Ohio Gas Company, City of Lima

Operating Expenses—Production Cost Mixed Gas Natural Gas Purchases, @ 55¢ per M.C.F.

Calendar Year 1931

	M.c.f.	Cents per m.c.f.	Money
Natural Gas Purchased—Total Lima District	194,214.300	55.000¢	$106,818.38
Transmission Expense East of Lima	.....	0.679	1,317.94
Total Cost of Purchased Gas	194,215.300	55.679	108,136.32
Less: Nat'l Gas Purchased for Cridersville.	2,526.200	55.679	1,406.55
Nat'l Gas Sold Lima Suburban	5,741.400	55.679	3,196.73
Total Deduction	8,267.600	55.679	4,603.28
Natural Gas Used in Mixed Gas	185,947.700	55.679	103,553.04
Water Gas Produced	268,254.000	20.201	54,190.25
Holder Stock Adjustment	206.000	.....	84.70
Duplicate Production Charges	.....	.....	(211.27)
Total Mixed Gas Available for Delivery	454,407.700	34.681	157,596.72
Less: Unaccounted for Gas (excl. Cridersville)	54,101.100	.....	.....
Gas Used in Operation	3,479.700	.....	.....
Total Deduction	57,580.800	.....	.....
Total Mixed Gas Sold	396,826.900	39.714	157,596.72
Less: Sales to Lima Suburban	3,351.800	39.714	1,331.14
Sales to Delphos	25,974.800	39.714	10,315.69
Sales to Towns North	16,704.400	39.714	6,634.02
Total Mixed Gas Sold outside Lima	46,031.000	39.714	18,280.85
Total Mixed Gas Sold in City of Lima	350,795.900	39.714¢	$139,315.87

[fol. 833] West Ohio Gas Company, City of Lima

Operating Expenses—Production Cost Mixed Gas—Natural Gas Purchases @ 55¢ per M.C.F.

Three Years and Nine Months Ending December 31, 1931

	M.c.f.	Cents per m.c.f.	Money
Natural Gas Purchased—Total Lima District	698,313.405	55.000¢	$384,072.32
Transmission Expense East of Lima	.....	0.289	2,014.83
Total Cost of Purchased Gas	698,313.405	55.289	386,087.15
Less: Nat'l Gas Purchased for Cridersville	11,909.847	55.289	6,584.78
Nat'l Gas Sold Lima Suburban	23,016.700	55.289	12,725.59
Total Deduction	34,926.547	55.289	19,310.37

	M.c.f.	Cents per m.c.f.	Money
Natural Gas Used in Mixed Gas	663,386.858	55.289	366,776.78
Water Gas Produced	981,236.000	21.276	208,773.08
Holder Stock Adjustment	102.000	.....	90.13
Duplicate Production Charges	.....	.....	(1,655.80)
Total Mixed Gas Available for Delivery	1,644,724.858	34.898	573,984.19
Less: Unaccounted for Gas (excl. Cridersville)	143,117.458	.....	.....
Gas Used in Operation	13,910.300	.....	.....
Total Deduction	157,027.758	.....	.....
Total Mixed Gas Sold	1,487,697.100	38.582	573,984.19
Less: Sales to Lima Suburban	6,558.600	38.582	2,530.44
Sales to Delphos	33,873.800	38.582	13,069.21
Sales to Towns North	17,939.300	38.582	6,921.35
Total Mixed Gas Sold outside Lima	58,371.700	38.582	22,521.00
Total Mixed Gas Sold in City of Lima	1,429,325.400	38.582¢	$551,463.19

[fol. 834] West Ohio Gas Company, City of Lima

Cost of Producing Water Gas

Year ending March 31, 1928.
Nine Months ending December 31, 1928.
Calendar Year 1929.
Calendar Year 1930.
Calendar Year 1931.
Three Years and Nine Months ending December 31, 1931.

[fol. 835] West Ohio Gas Company, City of Lima

Cost of Producing Water Gas

Year Ending March 31, 1928

	Amount	Cents Per m.c.f.
Water Gas Produced—m.c.f.	232,015	.....
Production Operating Expense—		
Superintendence	$2,196.00	0.947¢
Generator Labor	3,382.67	1.458
Purification Labor	77.75	0.034
Miscellaneous Works Labor	2,091.08	0.901
Steam Expense—Apportioned	21,200.69	9.137
Generator Fuel	28,754.74	12.393
Water Gas Oil	387.28	0.167
Purification Supplies	.....	.....
Miscellaneous Works Expense	1,122.81	0.484
Gas Storage	1,053.54	0.454
Total Operating Expense	60,266.56	25.975

	Amount	Cents Per m.c.f.
Production Maintenance Expense—		
Works and Station Structures	343.84	0.148
Steam Engines	184.90	0.080
Miscellaneous Power Equipment	102.01	0.044
Water Gas Sets	909.39	0.392
Purification Apparatus	101.51	0.044
Holders	329.64	0.142
Accessory Works Equipment	281.18	0.121
Laboratory Equipment	142.34	0.061
Implements and Accessories	47.61	0.021
Total Maintenance Expense	2,442.42	1.053
Total Water Gas Cost	$62,708.98	27.028¢

[fol. 836] West Ohio Gas Company, City of Lima

Cost of Producing Water Gas

Nine Months Ending December 31, 1928

	Amount	Cents per m.c.f.
Water Gas Produced—m.c.f.	194,457	.....
Production Operating Expense—		
Superintendence	$1,730.00	0.890¢
Generator Labor	2,397.53	1.233
Purification Labor	185.46	0.095
Miscellaneous Works Labor	1,326.22	0.682
Steam Expense—Apportioned	10,488.00	5.394
Generator Fuel	22,081.09	11.355
Water Gas Oil	48.75	0.025
Purification Supplies	.....	.....
Miscellaneous Works Expense	971.05	0.499
Gas Storage	271.85	0.140
Total Operating Expense	39,499.95	20.313
Production Maintenance Expense—		
Works and Station Structures	643.17	0.331
Steam Engines	110.41	0.057
Miscellaneous Power Equipment	121.09	0.062
Water Gas Sets	1,158.23	0.596
Purification Apparatus	1,667.66	0.857
Holders	227.89	0.117
Accessory Works Equipment	66.29	0.034
Laboratory Equipment	30.57	0.016
Implements and Accessories	38.75	0.020
Total Maintenance Expense	4,064.06	2.090
Total Water Gas Cost	$43,564.01	22.403¢

[fol. 837] West Ohio Gas Company, City of Lima

Cost of Producing Water Gas

Calendar Year 1929

	Amount	Cents per m.c.f.
Water Gas Produced—m.c.f.	267,541	.....
Production Operating Expense—		
Superintendence	$2,089.15	0.781
Generator Labor	3,869.41	1.446

	Amount	Cents Per m.c.f.
Purification Labor	88.00	0.033
Miscellaneous Works Labor	2,063.55	0.771
Steam Expense—Apportioned	12,774.59	4.775
Generator Fuel	30,728.90	11.486
Water Gas Oil	.....	.....
Purification Supplies	.....	.....
Miscellaneous Works Expense	1,608.43	0.601
Gas Storage	1,320.97	0.494
Total Operating Expense	54,543.00	20.387
Production Maintenance Expense—		
Works and Station Structures	612.78	0.229
Steam Engines	106.89	0.040
Miscellaneous Power Equipment	401.60	0.150
Water Gas Sets	1,587.23	0.594
Purification Apparatus	1,701.27	0.636
Holders	140.44	0.052
Accessory Works Equipment	474.87	0.177
Laboratory Equipment	57.68	0.022¢
Implements and Accessories	114.49	0.043
Total Maintenance Expense	5,197.25	1.943
Total Water Gas Cost	$59,740.25	22.330

[fol. 838] West Ohio Gas Company, City of Lima

Cost of Producing Water Gas

Calendar Year 1930

	Amount	Cents per m.c.f.
Water Gas Produced—m.c.f.	250,984	.....
Production Operating Expense—		
Superintendence	$1,800.00	0.717¢
Generator Labor	3,518.94	1.402
Purification Labor	201.58	0.080
Miscellaneous Works Labor	2,240.78	0.893
Steam Expense—Apportioned	12,415.32	4.947
Generator Fuel	26,426.45	10.528
Water Gas Oil	.....	.....
Purification Supplies	.....	.....
Miscellaneous Works Expense	1,033.13	0.412
Gas Storage	854.99	0.341
Total Operating Expense	48,491.19	19.320
Production Maintenance Expense—		
Works and Station Structures	516.13	0.206
Steam Engines	265.68	0.106
Miscellaneous Power Equipment	.....	.....
Water Gas Sets	1,136.17	0.453
Purification Apparatus	248.53	0.099
Holders	246.16	0.098
Accessory Works Equipment	312.25	0.124
Laboratory Equipment	62.46	0.025
Implements and Accessories	.....	.....
Total Maintenance Expense	2,787.38	1.111
Total Water Gas Cost	$51,278.57	20.431¢

[fol. 839] West Ohio Gas Company, City of Lima

Cost of Producing Water Gas

Calendar Year 1931

	Amount	Cents per m.c.f.
Water Gas Produced—m.c.f.	268,254	.....
Production Operating Expense—		
Superintendence	$1,800.00	0.671¢
Generator Labor	3,284.13	0.224
Purification Labor	96.88	0.036
Miscellaneous Works Labor	682.60	0.255
Steam Expense—Apportioned	15,057.32	5.613
Generator Fuel	27,535.15	10.264
Water Gas Oil	.....	.....
Purification Supplies	.....	.....
Miscellaneous Works Expense	1,064.14	0.397
Gas Storage	956.93	0.357
Total Operating Expense	50,477.15	18.817
Production Maintenance Expense—		
Works and Station Structures	657.63	0.245
Steam Engines	90.38	0.034
Miscellaneous Power Equipment	.....	.....
Water Gas Sets	2,118.94	0.790
Purification Apparatus	87.93	0.033
Holders	277.61	0.103
Accessory Works Equipment	447.53	0.167
Laboratory Equipment	33.08	0.012
Implements and Accessories	.....	.....
Total Maintenance Expense	3,713.10	1.384
Total Water Gas Cost	$54,190.25	20.201¢

[fol. 840] West Ohio Gas Company, City of Lima

Cost of Producing Water Gas

Three Years and Nine Months Ending December 31, 1931

	Amount	Cents per m.c.f.
Water Gas Produced	981,236	.....
Production Operating Expense—		
Superintendence	$7,419.15	0.756¢
Generator Labor	13,070.01	1.332
Purification Labor	571.92	0.058
Miscellaneous Works Labor	6,313.15	0.643
Steam Expense—Apportioned	50,735.23	5.171
Generator Fuel	106,771.59	10.881
Water Gas Oil	48.75	0.005
Purification Supplies	.....	.....
Miscellaneous Works Expense	4,676.75	0.477
Gas Storage	3,404.74	0.347
Total Operating Expense	193,011.29	19.670
Production Maintenance Expense—		
Works and Station Structures	2,429.71	0.248
Steam Engines	1,096.05	0.112
Miscellaneous Power Equipment	.....	.....
Water Gas Sets	6,000.57	0.611

	Amount	Cents Per m.c.f.
Purification Apparatus	3,705.39	0.377
Holders	892.10	0.091
Accessory Works Equipment	1,300.94	0.133
Laboratory Equipment	337.03	0.034
Implements and Accessories	.....	.....
Total Maintenance Expense	15,761.79	1.606
Total Water Gas Cost	$208,773.08	21.276¢

[fol. 841] West Ohio Gas Company, City of Lima

Distribution Expense

Year Ending March 31, 1928

Nine Months Ending December 31, 1928

Calendar Year 1929

Calendar Year 1930

Calendar Year 1931

Three Years and Nine Months Ending December 31, 1931

[fol. 842] West Ohio Gas Company, City of Lima

Operating Expense—Distribution Expense, Year Ending March 31, 1928

			Allocated to City of Lima	
	Lima District	%	Amount	Cents per m.c.f.
Gas Sold—m.c.f.	385,030.1	97.8%	376,681.8	.....
Operating Distribution Expense—				
Superintendence	$3,231.79	97.8	$3,161.72	0.839¢
Pumping Expense	3,791.66	97.8	3,709.45	0.985
Operating Labor and Expense	1,430.50	97.8	1,399.48	0.372
Supplies and Expense	1,210.05	97.8	1,183.81	0.314
(x)Work on Consumers' Premises	10,626.83	97.5	10,356.61	2.749
(x)Removing and Resetting Meters	6,979.33	97.5	6,801.86	1.806
Maps and Records	.....	97.8	.....	.....
Total	27,270.16	....	26,612.93	7.065
Maintenance Distribution Expense—				
Mains	4,420.15	97.8	4,324.31	1.148
(x)Services	2,951.35	97.5	2,876.30	0.764
Buildings and Shops	.....	97.8	.....	.....
Implements and Accessories	232.59	97.8	227.55	0.060
(x)Gas Appliances	18.16	97.5	17.70	0.005
(x)Consumers' Meters	8,477.07	97.5	8,261.52	2.193
Total	16,099.32	....	15,707.38	4.170
Duplicate Charges	(208.80)	97.8	(204.27)	(0.054)
Total Distribution Expense	$43,160.68	97.6%	$42,116.04	11.181¢

Allocated to City of Lima on basis of quantity of gas sold, except items marked (x) which are allocated on basis of number of consumers.

[fol. 843] West Ohio Gas Company, City of Lima

Operating Expense—Distribution Expense, Nine Months Ending December 31, 1928

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Gas Sold—m.c.f.	308,486.9	97.8%	301,688.9	.....
Operating Distribution Expense—				
Superintendence	$2,690.60	97.8	$2,631.41	0.872¢
Pumping Expense	2,776.74	97.8	2,715.55	0.900
Operating Labor and Expense	1,397.15	97.8	1,366.36	0.452
Supplies and Expense	739.55	97.8	723.25	0.240
(x)Work on Consumers' Premises	7,704.56	97.3	7,439.99	2.485
(x)Removing and Resetting Meters	4,789.98	97.3	4,659.07	1.544
Maps and Records	.....	....	.....	.....
Total	20,098.58	97.5	19,589.63	6.493
Maintenance Distribution Expense—				
Mains	3,581.98	97.8	3,503.05	1.161
(x)Services	2,913.76	97.3	2,834.13	0.939
Buildings and Shops	49.42	97.8	48.33	0.016
Implements and Accessories	192.14	97.8	187.91	0.062
(x)Gas appliances	787.47	97.3	765.85	0.254
(x)Consumers' Meters	4,982.30	97.3	4,846.13	1.607
Total	12,507.07	97.4	12,185.40	4.039
Duplicate Charges	(86.45)	97.8	(84.54)	(0.028)
Total Distribution Expense	$32,519.20	97.5%	$31,690.49	10.504¢

Allocated to City of Lima on basis of quantity of gas sold, except items marked (x) which are allocated on basis of number of consumers.

[fol. 844] West Ohio Gas Company, City of Lima

Operating Expense—Distribution Expense, Calendar Year 1929

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Gas Sold—m.c.f.	408,087.5	97.6%	398,307.9	.....
Operating Distribution Expense—				
Superintendence	$3,786.37	97.6	$3,695.63	0.927¢
Pumping Expense	3,734.28	97.6	3,644.79	0.915
Operating Labor and Expense	1,312.61	97.6	1,281.15	0.322
Supplies and Expense	839.47	97.6	819.35	0.206
(x)Work on Consumers' Premises	7,528.54	97.2	7,315.58	1.837
(x)Removing and Resetting Meters	5,234.52	97.2	5,086.45	1.277
Maps and Records	.....	....	.....	.....
Total	22,435.79	97.4	21,842.6	5.484
Maintenance Distribution Expense—				
Mains	5,638.98	97.6	5,503.84	1.382
(x)Services	5,071.73	97.2	4,928.27	1.237
Buildings and Shops	16.80	97.6	16.40	0.004
Implements and Accessories	224.72	97.6	219.33	0.055

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
(x)Gas Appliances	2,122.51	97.2	2,062.47	0.518
(x)Consumers' Meters	7,363.48	97.2	7,155.19	1.796
Total	20,438.22	97.3	19,885.50	4.992
Duplicate Charges	.....	....	.....	.....
Total Distribution Expense.	$42,874.01	97.3%	$41,728.45	10.476¢

Allocated to City of Lima on basis of quantity of gas sold, except items marked (x) which are allocated on basis of number of consumers.

[fol. 845] West Ohio Gas Company, City of Lima

Operating Expense—Distribution Expense, Calendar Year 1930

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Gas Sold—m.c.f.	388,571.3	97.4%	378,532.7	.....
Operating Distribution Expense—				
Superintendence	$3,325.28	97.4	$3,239.37	0.856¢
Pumping Expense	4,997.72	97.4	4,868.61	1.286
Operating Labor and Expense	1,682.42	97.4	1,638.96	0.433
Supplies and Expense	914.75	97.4	891.12	0.235
(x)Work on Consumers' Premises	6,102.35	97.1	5,923.94	1.565
(x)Removing and Resetting Meters	4,569.11	97.1	4,435.53	1.172
Maps and Records	848.71	97.4	826.78	0.219
Total	22,440.34	97.3	21,824.31	5.766
Maintenance Distribution Expense—				
Mains	3,861.96	97.4	3,762.19	0.994
(x)Services	3,572.41	97.1	3,467.97	0.916
Buildings and Shops	96.03	97.4	93.55	0.025
Implements and Accessories	281.50	97.4	274.23	0.072
(x)Gas Appliances	2,755.77	97.1	2,675.20	0.707
(x)Consumers' Meters	4,664.59	97.1	4,528.22	1.196
Total	15,232.26	97.2	14,801.36	3.910
Duplicate Charges	(24.00)	97.4	(23.38)	(0.006)
Total Distribution Expense.	$37,648.60	97.2%	$36,602.29	9.670¢

Allocated to City of Lima on basis of quantity of gas sold, except items marked (x) which are allocated on basis of number of consumers.

[fol. 846] West Ohio Gas Company, City of Lima

Operating Expense—Distribution Expense, Calendar Year 1931

	Lima District	%	Allocated to City of Lima Amount	Allocated to City of Lima Cents per m.c.f.
Gas Sold—m.c.f.	361,881.2	96.9%	350,795.9	.....
Operating Distribution Expense—				
Superintendence	$3,443.67	96.9	$3,338.18	0.952¢
Pumping Expense	7,627.96	96.9	7,394.30	2.109
Operating Labor and Expense	1,616.73	96.9	1,567.21	0.447
Supplies and Expense	888.03	96.9	860.83	0.245
(x)Work on Consumers' Premises	5,881.39	96.8	5,691.01	1.621
(x)Removing and Resetting Meters	4,061.82	96.8	3,930.34	1.120
Maps and Records	2,186.57	96.9	2,119.59	0.604
Total	25,706.17	96.9	24,901.46	7.098
Maintenance Distribution Expense—				
Mains	4,065.92	96.9	3,941.37	1.124
(x)Services	3,734.04	96.8	3,613.17	1.030
Buildings and Shops	188.84	96.9	183.06	0.052
Implements and Accessories	292.55	96.9	283.59	0.081
(x)Gas Appliances	2,159.11	96.8	2,089.22	0.596
(x)Consumers' Meters	4,723.56	96.8	4,570.66	1.302
Total	15,164.02	96.8	14,681.07	4.185
Duplicate Charges	(352.50)	(96.9)	(341.70)	(0.097)
Total Distribution Expense	$40,517.69	96.8%	$39,240.83	11.186¢

Allocated to City of Lima on basis of quantity of gas sold, except items marked (x) which are allocated on basis of number of consumers.

[fol. 847] West Ohio Gas Company, City of Lima

Operating Expense—Distribution Expense, Three Years and Nine Months Ending December 31, 1931

	Lima District	%	Allocated to City of Lima Amount	Allocated to City of Lima Cents per m.c.f.
Gas Sold—m.c.f.	1,467,026.9	97.4%	1,429,325.4	.....
Operating Distribution Expense—				
Superintendence	$13,245.92	97.4	$12,905.51	0.903¢
Pumping Expense	19,136.70	97.4	18,644.90	1.304
Operating Labor and Expense	6,008.91	97.4	5,854.49	0.410
Supplies and Expense	3,381.80	97.4	3,294.89	0.231
(x)Work on Consumers' Premises	27,216.84	97.1	26,420.51	1.848
(x)Removing and Resetting Meters	18,655.43	97.1	18,109.59	1.267
Maps and Records	3,035.28	97.4	2,957.28	0.207
Total	90,680.88	97.3	88,187.17	6.170
Maintenance Distribution Expense—				
Mains	17,148.84	97.4	16,708.13	1.169
(x)Services	15,291.94	97.1	14,844.52	1.039
Buildings and Shops	351.09	97.4	342.07	0.024

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Implements and Accessories	990.91	97.4	965.44	0.068
(x)Gas Appliances	7,824.86	97.1	7,595.91	0.531
(x)Consumers' Meters	21,733.93	97.1	21,098.02	1.476
Total	63,341.57	97.2	61,554.09	4.307
Duplicate Charges	(462.95)	(97.4)	(451.05)	(0.032)
Total Distribution Expense	$153,559.50	97.2%	$149,290.21	10.445¢

Allocated to City of Lima on basis of quantity of gas sold, except items marked (x) which are allocated on basis of number of consumers.

[fol. 848] West Ohio Gas Company, Lima District

Segregation of Distribution Expense

Year ending March 31, 1928.
Nine Months ending December 31, 1928.
Calendar Year 1929.
Calendar Year 1930.
Calendar Year 1931.
Three Years and Nine Months ending December 31, 1931.

[fol. 849] West Ohio Gas Company, Lima District

Segregation of Distribution Expense

	Trans. and Dist'n Exp. per Company's Books	Trans. Expense West Account Cridersville	Distribution Expense
Operations Expense—			
Superintendence	$3,260.21	$28.42	$3,231.79
Pumping Expense	3,792.71	1.05	3,791.66
Operating Labor and Expense	1,442.54	12.04	1,430.50
Supplies and Expense	1,216.15	6.10	1,210.05
Work on Consumers' Premises	10,626.83	.....	10,626.83
Removing and Resetting Meters	6,979.33	.....	6,979.33
Maps and Records	.....	.....	.....
Total	27,317.77	47.61	27,270.16
Maintenance Expense—			
Mains	4,445.71	25.56	4,420.15
Services	2,951.35	.....	2,951.35
Buildings and Shops	.....	.....	.....
Implements and Accessories	232.59	.....	232.59
Gas Appliances	18.16	.....	18.16
Consumers' Meters	8,477.07	.....	8,477.07
Total	16,124.88	25.56	16,099.32
Duplicate Charges	(208.80)	.....	(208.80)
Total Distribution Expense	$43,233.85	$73.17	$43,160.68

[fol. 850] West Ohio Gas Company, Lima District

Segregation of Distribution Expense

Nine Months Ending December 31, 1928

	Trans. and Dist'n Exp. per Company's Books	Trans. Expense West Account Cridersville	Distribution Expense
Operations Expense—			
Superintendence	$2,762.09	$71.49	$2,690.60
Pumping Expense	2,776.76	.02	2,776.74
Operating Labor and Expense	1,427.28	30.13	1,397.15
Supplies and Expense	757.07	17.52	739.55
Work on Consumers' Premises	7,704.56	.....	7,704.56
Removing and Resetting Meters	4,789.98	.....	4,789.98
Maps and Records	.....	.....	.....
Total	20,217.74	119.16	20,098.58
Maintenance Expense—			
Mains	3,619.27	37.29	3,581.98
Services	2,913.76	.....	2,913.76
Buildings and Shops	49.42	.....	49.42
Implements and Accessories	192.14	.....	192.14
Gas Appliances	787.47	.....	787.47
Consumers' Meters	4,982.30	37.29	4,982.30
Total	12,544.36	.....	12,507.07
Duplicate Charges	(86.45)	.....	(86.45)
Total Distribution Expense	$32,675.65	$156.45	$32,519.20

[fol. 851] West Ohio Gas Company, Lima District

Segregation of Distribution Expense

Calendar Year 1929

	Trans. and Dist'n Exp. per Company's Books	Trans. Expense West Account Cridersville	Distribution Expense
Operations Expense—			
Superintendence	$3,813.67	$27.30	$3,786.37
Pumping Expense	3,734.37	.09	3,734.28
Operating Labor and Expense	1,316.62	4.01	1,312.61
Supplies and Expense	846.19	6.72	839.47
Work on Customers' Premises	7,528.54	.....	7,528.54
Removing and Resetting Meters	5,234.52	.....	5,234.52
Maps and Records	.....	.....	.....
Total	22,473.91	38.12	22,435.79
Maintenance Expense—			
Mains	5,654.31	15.33	5,638.98
Services	5,071.73	.....	5,071.73
Buildings and Shops	16.80	.....	16.80
Implements and Accessories	224.72	.....	224.72
Gas Appliances	2,122.51	.....	2,122.51
Consumers' Meters	7,363.48	.....	7,363.48
Total	20,453.55	15.33	20,438.22
Duplicate Charges	.....	.....	.....
Total Distribution Expense	$42,927.46	$53.45	$42,874.01

[fol. 852]

West Ohio Gas Company, Lima District

Segregation of Distribution Expense, Calendar Year 1930

	Trans. and Dist'n Exp. per Company's Books	Trans. Expense West Account Cridersville	Trans. Expense East (Cost of Gas)	Distribution Expense
Operations Expense—				
Superintendence	$3,672.61	$20.81	$326.52	$3,325.28
Pumping Expense	4,997.72	.....	.....	4,997.72
Operating Labor and Expense	1,805.10	10.33	112.35	1,682.42
Supplies and Expense	1,075.93	11.34	149.84	914.75
Work on Consumers' Premises	6,102.35	.....	.....	6,102.35
Removing and Resetting Meters	4,569.11	.....	.....	4,569.11
Maps and Records	851.13	2.42	.....	848.71
Total	23,073.95	44.90	588.71	22,440.34
Maintenance Expense—				
Mains	3,981.77	11.63	108.18	3,861.96
Services	3,572.41	.....	.....	3,572.41
Buildings and Shops	96.03	.....	.....	96.03
Implements and Accessories	281.50	.....	.....	281.50
Gas Appliances	2,755.77	.....	.....	2,755.77
Consumers' Meters	4,664.59	.....	.....	4,664.59
Total	15,352.07	11.63	108.18	15,232.26
Duplicate Charges	(24.00)	.....	.....	(24.00)
Total Distribution Expense	$38,402.02	$56.53	$696.89	$37,648.60

[fol. 853]

West Ohio Gas Company, Lima District

Segregation of Distribution Expense, Calendar Year 1931

	Trans. and Dist'n Exp. per Company's Books	Trans. Expense West Account Cridersville	Trans. Expense East (Cost of Gas)	Trans. Expense North	Distribution Expense
Operations Expense—					
Superintendence	$4,095.02	$23.28	$628.07	.....	$3,443.67
Pumping Expense	7,627.96	.....	.....	.....	7,627.96
Operating Labor and Expense	2,034.76	23.08	290.52	$104.43	1,616.73
Supplies and Expense	888.03	.....	.....	.....	888.03
Work on Consumers' Premises	5,881.39	.....	.....	.....	5,881.39
Removing and Resetting Meters	4,061.82	.....	.....	.....	4,061.82
Maps and Records	2,186.57	.....	.....	.....	2,186.57
Total	26,775.55	46.36	918.59	104.43	25,706.17
Maintenance Expense—					
Mains	4,720.65	9.16	396.24	249.33	4,065.92
Services	3,734.04	.....	.....	.....	3,734.04
Buildings and Shops	188.84	.....	.....	.....	188.84
Implements and Accessories	304.69	1.66	3.11	7.37	292.55
Gas Appliances	2,159.11	.....	.....	.....	2,159.11
Consumers' Meters	4,723.56	.....	.....	.....	4,723.56
Total	15,830.89	10.82	399.35	256.70	15,164.02
Duplicate Charges	(352.50)	.....	.....	.....	(352.50)
Total Distribution Expense	$42,253.94	$57.18	$1,317.94	$361.13	$40,517.69

[fol. 854]

West Ohio Gas Company, Lima District

Segregation of Distribution Expense, Three Years and Nine Months Ending December 31, 1931

	Trans. and Dist'n Exp. per Company's Books	Trans. Expense West Account Cridersville	Trans. Expense East (Cost of Gas)	Trans. Expense North	Distribution Expense
Operations Expense—					
Superintendence	$14,343.39	$142.88	$954.59	.....	$13,245.92
Pumping Expense	19,136.81	.11	.....	.....	19,136.70
Operating Labor and Expense	6,583.76	67.55	402.87	104.43	6,008.91
Supplies and expense	3,567.22	35.58	149.84	.....	3,381.80
Work on Consumers' Premises	27,216.84	.....	.....	.....	27,216.84
Removing and Resetting Meters	18,655.43	.....	.....	.....	18,655.43
Maps and Records	3,037.70	2.42	.....	.....	3,035.28
Total	92,541.15	248.54	1,507.30	104.43	90,680.88
Maintenance Expense—					
Mains	17,976.00	73.41	504.42	249.33	17,148.84
Services	15,291.94	.....	.....	.....	15,291.94
Buildings and Shops	351.09	.....	.....	.....	351.09
Implements and Accessories	1,003.05	1.66	3.11	7.37	990.91
Gas Appliances	7,824.86	.....	.....	.....	7,824.86
Consumers' Meters	21,733.93	.....	.....	.....	21,733.93
Total	64,180.87	75.07	507.53	256.70	63,341.57
Duplicate Charges	(462.95)	.....	.....	.....	(462.95)
Total Distribution Expense	$156,259.07	$323.61	$2,014.83	$361.13	$153,559.50

[fol. 855] West Ohio Gas Company, City of Lima

Commercial Expense and New Business Expense

Year ending March 31, 1928.
Nine Months ending December 31, 1928.
Calendar Year 1929.
Calendar Year 1930.
Calendar Year 1931.
Three Years and Nine Months ending December 31, 1931.

[fol. 856] West Ohio Gas Company, City of Lima

Operating Expense—Commercial and New Business Expense, Year Ending March 31, 1928

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Gas Sold—m.c.f.	385,031.1	97.8%	376,681.8	....
Commercial Expense—				
General Labor	$7,206.11	97.5	$7,022.87	1.864¢
Bookkeeping	2,825.31	97.5	2,753.47	0.731
Contracts	360.00	97.5	350.85	0.093
Collecting	4,146.21	97.5	4,040.78	1.073
Meter Reading	3,855.88	97.5	3,757.83	0.998
Supplies and Expense	4,328.04	97.5	4,217.99	1.120
Commercial Expense Transferred	.....	....	.....	.....
Total Commercial Expense.	22,721.55	97.5	22,143.79	5.879
New Business Expense—				
Salaries	243.50	97.5	237.31	0.063
Demonstrations & Home Service	1,216.09	97.5	1,185.17	0.315
Piping and Appliances	.....	....	.....	.....
Advertising	1,926.37	97.5	1,877.38	0.498
Canvassing and Soliciting	5,034.57	97.5	4,906.55	1.302
Supplies and Expense	628.80	97.5	612.81	0.163
Total New Business Expense	$9,049.33	97.5%	$8,819.22	2.341¢

Allocated to City of Lima on basis of number of consumers.

[fol. 857] West Ohio Gas Company, City of Lima

Operating Expense—Commercial and New Business Expense, Nine Months Ending December 31, 1928

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Gas Sold—m.c.f.	308,486.9	97.8%	301,688.9	.....
Commercial Expense—				
General Labor	$4,724.22	97.3	$4,595.11	1.523¢
Bookkeeping	1,983.75	97.3	1,929.53	0.640
Contracts	270.00	97.3	262.62	0.087

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Collecting	3,092.53	97.3	3,008.01	0.997
Meter Reading	3,117.21	97.3	3,032.02	1.005
Supplies and Expense	3,358.82	97.3	3,267.02	1.083
Commercial Expense Transferred	.....	....	.....	.....
Total Commercial Expense	16,546.53	97.3	16,094.31	5.335
New Business Expense—				
Salaries	224.26	97.3	218.13	0.072
Demonstrations & Home Service	1,140.41	97.3	1,109.24	0.368
Piping and Appliances	.....	....	.....	.....
Advertising	1,370.21	97.3	1,332.76	0.442
Canvassing and Soliciting	5,088.71	97.3	4,949.64	1.641
Supplies and Expense	450.16	97.3	437.86	0.145
Total New Business Expense	$8,273.75	97.3%	$8,047.63	2.668¢

Allocated to City of Lima on basis of number of consumers.

[fol. 858] West Ohio Gas Company, City of Lima

Operating Expense—Commercial and New Business Expense, Calendar Year 1929

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Gas Sold—m.c.f.	408,087.5	97.6%	398,307.9	.....
Commercial Expense—				
General Labor	$6,120.72	97.2	$5,947.59	1.493¢
Bookkeeping	2,566.14	97.2	2,493.55	0.626
Contracts	360.00	97.2	349.82	0.088
Collecting	4,303.01	98.2	4,181.29	1.050
Meter Reading	4,479.90	98.2	4,353.18	1.093
Supplies and Expense	4,509.81	98.2	4,382.24	1.100
Commercial Expense Transferred	.....	....	.....	.....
Total Commercial Expense	22,339.58	97.2	21,707.67	5.450
New Business Expense—				
Salaries	206.53	97.2	200.69	0.050
Demonstrations & Home Service	1,782.67	97.2	1,732.24	0.435
Piping and Appliances	.....	....	.....	.....
Advertising	2,350.85	97.2	2,284.35	0.574
Canvassing and Soliciting	8,430.99	97.2	8,192.51	2.057
Supplies and Expense	1,039.87	97.2	1,010.46	0.253
Total New Business Expense	$13,810.91	97.2%	$13,420.25	3.369

Allocated to City of Lima on basis of number of consumers.

[fol. 859] West Ohio Gas Company, City of Lima

Operating Expense—Commercial and New Business Expense, Calendar Year 1930

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Gas Sold—m.c.f.	388,571.3	97.4%	378,532.7	.....
Commercial Expense—				
General Labor	$5,069.93	97.1	$4,921.71	1.300¢
Bookkeeping	2,462.38	97.1	2,390.39	0.631
Contracts	360.00	97.1	349.47	0.092
Collecting	4,502.50	97.1	4,370.87	1.155
Meter Reading	4,904.93	97.1	4,761.53	1.259
Supplies and Expense	3,533.16	97.1	3,429.87	0.906
Commercial Expense Transferred	.....	....	.....	.....
Total Commercial Expense.	20,832.90	97.1	20,223.84	5.343
New Business Expense—				
Salaries	754.13	97.1	732.08	0.193
Demonstrations & Home Service	2,431.65	97.1	2,360.56	0.624
Piping and Appliances	265.04	97.1	257.29	0.068
Advertising	1,583.52	97.1	1,537.22	0.406
Canvassing and Soliciting	8,348.59	97.1	8,104.52	2.141
Supplies and Expense	462.46	97.1	448.94	0.119
Total New Business Expense	$13,845.39	97.1%	$13,440.61	3.551¢

Allocated to City of Lima on basis of number of consumers.

[fol. 860] West Ohio Gas Company, City of Lima

Operating Expense—Commercial and New Business Expense, Calendar Year 1931

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Gas Sold—m.c.f.	361,881.2	96.9%	350,975.9	.....
Commercial Expense—				
General Labor	$5,018.70	96.8	$4,856.24	1.383¢
Bookkeeping	3,381.37	96.8	3,271.92	0.933
Contracts	360.00	96.8	348.35	0.099
Collecting	3,964.38	96.8	3,836.06	1.094
Meter Reading	4,488.03	96.8	4,342.75	1.238
Supplies and Expense	2,996.70	96.8	2,899.70	0.827
Commercial Expense Transferred	(740.51)	96.8	(716.54)	(0.204)
Total Commercial Expense.	19,468.67	96.8	18,838.48	5.370
New Business Expense—				
Salaries	1,939.44	96.8	1,876.66	0.535
Demonstration & Home Service.	1,569.37	96.8	1,518.57	0.433
Piping and Appliances	94.91	96.8	91.84	0.026
Advertising	1,391.33	96.8	1,346.29	0.384
Canvassing and Soliciting	8,056.90	96.8	7,796.10	2.222
Supplies and Expense	856.05	96.8	828.34	0.236
Total New Business Expense	$13,908.00	96.8%	$13,457.80	3.836¢

Allocated to City of Lima on basis of number of consumers.

[fol. 861] West Ohio Gas Company, City of Lima

Operating Expense—Commercial and New Business Expense, Three Years and Nine Months Ending December 31, 1931

	Lima District	%	Allocated to City of Lima Amount	Allocated to City of Lima Cents per m.c.f.
Gas Sold—m.c.f.	1,467,026.9	97.4%	1,429,325.4	.....
Commercial Expense—				
General Labor	$20,933.57	97.1	$20,321.08	1.421¢
Bookkeeping	10,393.64	97.1	10,089.53	0.706
Contracts	1,350.00	97.1	1,310.50	0.092
Collecting	15,862.42	97.1	15,398.30	1.077
Meter Reading	16,990.07	97.1	16,492.96	1.154
Supplies and Expense	14,398.49	97.1	13,977.21	0.978
Commercial Expense Transferred	(740.51)	97.1	(718.84)	(0.050)
Total Commercial Expense	79,187.68	97.1	76,870.74	5.378
New Business Expense—				
Salaries	3,124.36	97.1	3,032.94	0.212
Demonstration & Home Service	6,924.10	97.1	6,721.51	0.470
Piping and Appliances	359.95	97.1	349.42	0.025
Advertising	6,695.91	97.1	6,500.00	0.455
Canvassing and Soliciting	29,925.19	97.1	29,049.61	2.032
Supplies and Expense	2,808.54	97.1	2,726.37	0.191
Total New Business Expense	$49,838.05	97.1%	$48,379.85	3.385¢

Allocated to City of Lima on basis of number of consumers.

[fol. 862] West Ohio Gas Company, City of Lima

General and Miscellaneous Expense

Year Ending March 31, 1928

Nine Months Ending December 31, 1928

Calendar Year 1929

Calendar Year 1930

Calendar Year 1931

Three Years and Nine Months Ending December 31, 1931

[fol. 863] West Ohio Gas Company, City of Lima

Operating Expense—General and Miscellaneous Expense, Year Ending March 31, 1928

	Lima District	%	Allocated to City of Lima Amount	Allocated to City of Lima Cents per m.c.f.
Gas Sold—m.c.f.	385,031.1	97.8%	376,681.8	.....
Administration Salaries	$9,654.91	97.5	$9,416.24	2.500¢
Other General Office Salaries	7,947.97	97.5	7,751.50	2.058

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
General Office Supplies & Expense	2,824.01	97.5	2,754.20	0.731
General Stationery & Printing	493.67	97.5	481.47	0.128
Operation of General Structures	.....	....	.....	.....
Maintenance of General Structures	164.96	97.5	160.88	0.043
Maintenance of Gen'l Office Equipt	.....	....	.....	.....
Law Expense	514.71	97.5	501.99	0.133
Insurance	3,346.31	97.5	3,263.59	0.866
Stores Exp. Inv'y. Adjustments	231.11	97.5	225.40	0.060
Undistributed Adjustments	(363.67)	97.5	(354.68)	(0.094)
Donations	828.65	97.5	808.17	0.215
Dues and Memberships	663.44	97.5	647.04	0.172
Miscellaneous General Expense	4,538.39	97.5	4.426.19	1.175
General Publicity & Advertising	379:43	97.5	370.05	0.098
Annual Reports and Bulletins	.....	....	.....	.....
Consulting Engineers	.....	....	.....	.....
Annual Audits	438.45	97.5	427.61	0.114
Injuries and Damages	753.06	97.5	734.44	0.195
Welfare Expense	702.65	97.5	685.28	0.182
Duplicate Miscellaneous Charges	(1,128.91)	97.5	(1,101.00)	(0.292)
Stock and Bond Expense	1,296.42	97.5	1,264.37	0.335
Amortization of Franchises	(250.00)	97.5	(243.82)	(0.065)
Services Rendered	150.00	97.5	146.29	0.039
Subtotal	33,185.56	97.5	32,365.21	8.593
Regulatory Commission Expense	1,880.71	....	.....	.....
Midland Company Services	3,998.90	....	.....	.....
Total per Company's Records	$39,065.17	....	$32,365.21	8.593¢

Allocated to City of Lima on basis of weighted average of expense other than cost of gas.

[fol. 864] West Ohio Gas Company, City of Lima

Operating Expense—General and Miscellaneous Expense, Nine Months Ending December 31, 1928

	Lima District	%	Allocated to City of Lima: Amount	Allocated to City of Lima: Cents per m.c.f.
Gas Sold—m.c.f.	308,486.9	97.8%	301,688.9	.....
Administration Salaries	$7,608.83	97.4	$7,408.85	2.456¢
Other General Office Salaries	5,942.11	97.4	5,785.93	1.918
General Office Supplies & Expense	2,030.04	97.4	1,976.68	0.655
General Stationery & Printing	297.24	97.4	289.43	0.096
Operation of General Structure	.....	....	.....	.....
Maintenance of Gen'l Structures	164.25	97.4	159.93	0.053
Maintenance of Gen'l Office Equipt	.....	....	.....	.....
Law Expense	371.14	97.4	361.39	0.120
Insurance	2,408.34	97.4	2,345.04	0.777
Stores Expense Inv'y. Adjustments	232.01	97.4	225.91	0.075
Undistributed Adjustments	(86.40)	97.4	(84.13)	(0.028)
Donations	1,524.77	97.4	1,484.69	0.492
Dues and Memberships	494.75	97.4	481.75	0.160
Miscellaneous General Expense	2,704.89	97.4	2,633.80	0.872
General Publicity and Advertising	687.86	97.4	669.78	0.222
Annual Reports and Bulletins	.....	....	.....	.....

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Consulting Engineers	.....	....	.....	.....
Annual Audits	336.65	97.4	327.80	0.109
Injuries and Damages	668.89	97.4	651.31	0.216
Welfare Expense	755.03	97.4	735.19	0.244
Duplicate Miscellaneous Charges	(639.59)	97.4	(622.78)	(0.206)
Stock and Bond Expense	1,432.87	97.4	1,395.21	0.462
Subtotal	26,933.68	97.4	26,225.78	8.693
Regulatory Commission Expense	.....	....	.....	.....
Midland Company Services	2,774.43	....	.....	.....
Total per Company's Records	$29,708.11	....	$26,225.78	8.693¢

Allocated to City of Lima on basis of weighted average of expense other than cost of gas.

[fol. 865] West Ohio Gas Company, City of Lima

Operating Expense—General and Miscellaneous Expense, Calendar Year 1929

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Gas Sold—m.c.f.	408,087.5	97.6%	398,307.9	.....
Administration Salaries	$10,741.61	97.3	$10,446.90	2.623¢
Other General Office Salaries	8,051.35	97.3	7,830.45	1.966
General Office Supplies & Expense	2,735.07	97.3	2,660.03	0.668
General Stationery & Printing	442.51	97.3	430.37	0.108
Operation of General Structure	.....	....	.....	.....
Maintenance of Gen'l Structures	6.07	97.3	5.90	0.001
Maintenance of Gen'l Office Equipt.	.....	....	.....	.....
Law Expense	849.80	97.3	826.48	0.208
Insurance	3,275.22	97.3	3,185.36	0.800
Stores Exp. Inventory Adjustments	410.21	97.3	398.96	0.100
Undistributed Adjustments	1,317.65	97.3	1,281.50	0.322
Donations	3,568.34	97.3	3,470.44	0.871
Dues and Membership	1,436.83	97.3	1,397.41	0.351
Miscellaneous and General Expense	4,350.84	97.3	4,231.47	1.062
General Publicity & Advertising	1,601.63	97.3	1,557.69	0.391
Annual Reports and Bulletins	.....	....	.....	.....
Consulting Engineers	.....	....	.....	.....
Annual Audits	570.22	97.3	554.58	0.139
Injuries and Damages	688.42	97.3	669.53	0.168
Welfare Expense	1,553.24	97.3	1,510.62	0.379
Duplicate Miscellaneous Charges	(1,740.39)	97.3	(1,692.64)	(0.425)
Stock and Bond Expense	1,732.66	97.3	1,685.12	0.423
Subtotal	41,591.28	97.3	40,450.17	10.155
Regulatory Commission Expense	.....	....	.....	.....
Midland Company Services	4,778.32	....	.....	.....
Total per Company's Records	$46,369.60	....	$40,450.17	10.155¢

Allocated to City of Lima on basis of weighted average of expense other than cost of gas.

[fol. 866] West Ohio Gas Company, City of Lima

Operating Expense—General and Miscellaneous Expense, Calendar Year 1930

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Gas Sold—m.c.f.	388,571.3	97.4%	378,532.7	.....
Administration Salaries	$14,227.01	97.2	$13,821.76	3.652¢
Other General Office Salaries	7,045.10	97.2	6,844.43	1.808
General Office Supplies & Expense	2,058.12	97.2	1,999.50	0.528
General Stationery & Printing	503.80	97.2	489.45	0.129
Operation of General Structures	.....	....	.....	.....
Maintenance of Gen'l Structures	2.73	97.2	2.65	0.001
Maintenance of Gen'l Office Equipt.	259.53	97.2	252.14	0.067
Law Expense	1,693.07	97.2	1,644.84	0.435
Insurance	3,192.43	97.2	3,101.50	0.819
Stores Exp. Inventory Adjustments	426.46	97.2	414.31	0.109
Undistributed Adjustments	(580.99)	97.2	(564.44)	(0.149)
Donations	2,078.80	97.2	2,019.59	0.534
Dues and Memberships	1,245.90	97.2	1,210.41	0.320
Miscellaneous General Expense	2,358.88	97.2	2,291.69	0.605
General Publicity & Advertising	1,200.77	97.2	1,166.57	0.308
Annual Reports and Bulletins	500.53	97.2	486.27	0.128
Consulting Engineers	52.39	97.2	50.90	0.013
Annual Audits	298.06	97.2	289.57	0.077
Injuries and Damages	254.12	97.2	246.89	0.065
Welfare Expense	2,184.52	97.2	2,122.29	0.561
Duplicate Miscellaneous Charges	(1,609.95)	97.2	(1,564.02)	(0.413)
Stock and Bond Expense	1,528.87	97.2	1,485.32	0.392
Subtotal	38,920.15	97.2	37,811.55	9.989
Regulatory Commission Expense	1,997.26	....	.....	.....
Midland Company Services	5,680.15	....	.....	.....
Total per Company's Records	$46,597.56	....	$37,811.55	9.989¢

Allocated to City of Lima on basis of weighted average of expense other than cost of gas.

[fol. 867] West Ohio Gas Company, City of Lima

Operating Expense—General and Miscellaneous Expense, Calendar Year 1931

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Gas Sold—m.c.f.	361,881.2	96.9%	350,795.9	.....
Administration Salaries	$11,561.04	96.8	$11,192.24	3.191¢
Other General Office Salaries	6,402.97	96.8	6,[illegible].71	1.767
General Office Supplies & Expense	1,144.14	96.8	1,[illegible].84	0.316
General Stationery & Printing	807.43	96.8	[illegible].67	0.223
Operation of General Structures	912.80	96.8	883.68	0.252
Maintenance of General Structures	176.00	96.8	170.39	0.049
Maintenance of Gen'l Office Equipt.	20.44	96.8	19.79	0.006
Law Expense	3,964.17	96.8	3,837.71	1.094
Insurance	3,108.20	96.8	3,009.05	0.858
Stores Exp. Inventory Adjustments	.....	....	.....	.....
Undistributed Adjustments	145.97	96.8	141.31	0.040
Donations	1,388.00	96.8	1,343.72	0.383
Dues and Memberships	1,154.70	96.8	1,117.86	0.319
Miscellaneous General Expense	1,303.03	96.8	1,261.46	0.360

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
General Publicity & Advertising..	802.31	96.8	776.71	0.222
Annual Reports and Bulletins....	61.23	96.8	59.28	0.017
Consulting Engineers.....	.....	....	.....	.....
Annual Audits.....	364.44	96.8	352.82	0.101
Injuries and Damages.....	1,307.53	96.8	1,265.82	0.361
Duplicate Miscellaneous Charges..	(1,127.11)	96.8	(1,091.15)	(0.312)
Welfare Expense.....	.....	....	.....	.....
Stock and Bond Expense.....	1,982.49	96.8	1,919.24	0.547
Subtotal.....	35,479.78	96.8	34,347.96	9.792
Regulatory Commission Expense..	.....	....	.....	.....
Midland Company Services.....	3,617.58	....	.....	.....
Total per Company's Records	$39,097.36	....	$34,347.96	9.792¢

Allocated to City of Lima on basis of weighted average of expense other than cost of gas.

[fol. 868] West Ohio Gas Company, City of Lima

Operating Expense—General and Miscellaneous Expense, Three Years and Nine Months Ending December 31, 1931

	Lima District	%	Allocated to City of Lima Amount	Cents per m.c.f.
Gas Sold—m.c.f.....	1,467,026.9	97.4%	1,429,325.4	.....
Administration Salaries.....	$44,138.49	97.2	$42,881.99	3.000¢
Other General Office Salaries.....	27,441.53	97.2	26,660.34	1.865
General Office Supplies & Expense.	7,967.37	97.2	7,740.56	0.542
General Stationery & Printing....	2,050.98	97.2	1,992.59	0.139
Operation of General Structures...	912.80	97.2	886.82	0.062
Maintenance of General Structures.	349.05	97.2	339.11	0.024
Maintenance of Gen'l Office Equipt.	279.97	97.2	272.00	0.019
Law Expense.....	6,878.18	97.2	6,682.38	1.468
Insurance.....	11,984.19	97.2	11,643.03	0.815
Stores Exp. Inventory Adjustments	1,068.68	97.2	1,038.26	0.073
Undistributed Adjustments.....	796.23	97.2	773.56	0.054
Donations.....	8,559.91	97.2	8,316.23	0.582
Dues and Memberships.....	4,332.18	97.2	4,208.85	0.294
Miscellaneous General Expense...	10,717.64	97.2	10,412.54	0.728
General Publicity & Advertising..	4,292.57	97.2	4,170.37	0.292
Annual Reports and Bulletins....	561.76	97.2	545.77	0.038
Consulting Engineers.....	52.39	97.2	50.90	0.004
Annual Audits.....	1,569.37	97.2	1,524.69	0.107
Injuries and Damages.....	2,918.96	97.2	2,835.87	0.198
Welfare Expense.....	4,492.79	97.2	4,364.89	0.305
Duplicate Miscellaneous Charges..	(5,117.04)	97.2	(4,971.37)	(0.348)
Stock and Bond Expense.....	6,676.89	97.2	6,486.82	0.454
Subtotal.....	142,924.89	97.2%	138,856.20	9.715
Regulatory Commission Expense..	1,997.26	....	.....	.....
Midland Company Services.....	16,850.48	....	.....	.....
Total per Company's Records	$161,772.63	....	$138,856.20	9.715¢

Allocated to City of Lima on basis of weighted average of expense other than cost of gas.

[fol. 869] West Ohio Gas Company, City of Lima

Final Valuation Found by The Public Utilities Commission of Ohio Allocated to Service Within the City of Lima—Reproduction Cost New—Present Value

West Ohio Gas Company, City of Lima

Commission's Final Valuation Reproduction Cost New, Property for Service Within the City of Lima

	Basis of Allocation	Lima District excluding Cridersville	Allocated to Service within City of Lima	
			%	Amount
Transmission System—				
Rights of Way	Quantity of	$15,187.93	97.2%	$14,767.15
Mains	Natural Gas	506,263.96	97.2	492,237.92
Towns Border Meter and Regulator Station	Purchased	2,179.36	97.2	2,118.98
Total		523,631.25	97.2	509,124.05
Manufacturing Plant—				
Land	Total	63,750.00	100.0	63,750.00
Buildings	"	81,346.07	100.0	81,346.07
Apparatus	"	153,705.41	100.0	153,705.41
Yard Structure	"	193,190.50	100.0	193,190.50
Miscellaneous	"	42,620.11	100.0	42,620.11
Total	"	534,612.09	100.0	534,612.09
Distribution System—				
Regulator Stations				
Land	Actual	2,050.00	100.0	2,050.00
Buildings	"	1,780.91	95.8	1,705.90
Building Contents	"	3,047.11	74.5	2,270.17
Mains	"	806,671.47	99.9	805,502.62
Services	"	129,898.56	100.0	129,841.41
House Governors	"	272.84	37.2	101.52
Meters and Connections	"	152,321.76	98.6	150,211.53
Tools	Distn. Syst. Ave.	3,390.05	99.6	3,376.57
Total		1,099,432.70	99.6	1,095,059.72
General Property—				
Office Furn. & Fixts.	No. of Consumers	11,900.00	98.7	11,746.23
Garage Equipment	" "	7,845.67	98.7	7,744.22
Total	" "	19,745.67	98.7	19,490.35
Undistributed Construction Charges	Wtd. Average	152,419.52	99.1	151,080.06
Total Physical Property	Wtd. Average	2,329,841.23	99.1	2,309,366.27
Working Capital	Wtd. Average	40,341.00	99.1	39,986.48
Materials and Supplies	Wtd. Average	22,802.00	99.1	22,601.62
Grand Total	Wtd. Average	$2,392,984.23	99.1%	$2,371,954.37

West Ohio Gas Company, City of Lima

Commission's Final Valuation Present Value, Property for Service Within the City of Lima

	Basis of Allocation	Lima District excluding Cridersville	Allocated to Service within City of Lima	
			%	Amount
Transmission System—				
Rights of Way	Quantity of	$15,187.93	97.2%	$14,767.15
Mains	Natural Gas	279,121.13	97.2	271,388.08
Town Border Meter and Regulator Station	Purchased	1,869.15	97.2	1,817.36
Total		296,178.21	97.2	287,972.59
Manufacturing Plant—				
Land	Total	63,750.00	100.0	63,750.00
Buildings	"	68,179.40	100.0	68,179.40
Apparatus	"	130,172.57	100.0	130,172.57
Yard Structures	"	160,610.15	100.0	160,610.15
Miscellaneous	"	37,895.42	100.0	37,895.42
Total	"	460,607.54	100.0	460,607.54
Distribution System—				
Regulator Stations				
Land	Actual	2,050.00	100.0	2,050.00
Buildings	"	1,269.27	95.0	1,206.06
Buildings Contents	"	2,590.03	74.5	1,929.63
Mains	"	691,135.02	99.9	690,127.30
Services	"	107,816.34	100.0	107,766.39
House Governors	"	231.91	37.2	86.29
Meters and Connections	"	137,089.59	98.6	135,190.38
Tools	Distn. Syst. Ave.	2,034.03	99.6	2,025.77
Total		944,216.19	99.6	940,381.82
General Property—				
Office Furn. & Fixts	No. of Consumers	10,995.60	98.7	10,853.43
Garage Equipment	" "	6,276.53	98.7	6,195.37
Total	" "	17,272.13	98.7	17,048.80
Undistributed Construction Charges	Wtd. Average	120,279.19	99.3	119,420.76
Total Physical Property	Wtd. Average	1,838,553.26	99.3	1,825,431.51
Working Capital	Wtd. Average	40,341.00	99.1	39,986.48
Materials and Supplies	Wtd. Average	22,802.00	99.1	22,601.62
Grand Total	Wtd. Average	$1,901,696.26	99.3%	$1,888,019.61

[fol. 872] STATEMENT OF H. R. ALLENSWORTH

H. R. Allensworth, Consulting Engineer

"M.A.I.E.E.
"M.W.S.E.
"Registered Prof. Eng.

Columbus, Ohio,
April 11th, 1930.

"The Hon. Frank W. Geiger, Chairman, The Public Utilities Commission of Ohio, Columbus, Ohio

"DEAR SIR: In answer to the question put to me, as Consulting Engineer for the City of Lima in the matter of the appeal of the West Ohio Gas Company from an ordinance rate passed by the City Council of the City of Lima, may I submit the following.

"The evidence indicates that the cost of manufactured gas at the holder tank is 20¢ plus per thousand cubic feet and that the cost of natural gas at the holder tank is 55¢ per thousand cubic feet. Accordingly, the cost of mixed gas at the holder tank is 35¢ plus or minus per M. cu. ft.

"In (Is?) the correct measure of that portion of the manufactured gas plant and the natural gas transmission main the proportion in which each gas makes up the mixed gas?

"The proportion of gas contributed by the manufactured gas plan to the mixed manufactured and natural gas is not a measure of the proportionate part of the manufactured gas plant not used or useful—nor is the proportion of the natural gas contributed to the mixed manufactured and natural gas by the natural gas transmission main a correct measure of that part of the transmission main not used or useful.

"The record discloses that the natural gas mixed with manufactured gas and distributed in the City of Lima and [fol. 873] the Lima district as mixed gas is purchased from The Ohio Fuel Gas Company delivered to a metering station at or about the Lima corporation line. This gas is brought to the metering station at Lima through forty-four miles often and twelve-inch transmission main owned by the West Ohio Gas Company. The record discloses further that the amount paid by the West Ohio Gas Company to The Ohio Fuel Gas Company for natural gas delivered

to it through its forty-four miles of transmission main to the measuring station at Lima is 55¢ per thousand cubic feet. The record further discloses that this is the highest wholesale price paid by any distributor of natural gas in the State of Ohio.

"The record does not show, nor is there anything in the record to even indicate, that the price of natural gas delivered to the City of Lima would be higher were this forty-four miles of transmission main owned by The Ohio Fuel Gas Company. From this circumstance, the record does not show nor does it even indicate that the West Ohio Gas Company, (2) the purchaser of this natural gas, or the gas consumers in Lima and the Lima district are benefited because of the ownership of this forty-four miles of transmission main vests in the West Ohio Gas Company.

"On the contrary gas consumers in the City of Lima and the Lima district are penalized by being forced to pay a higher price for mixed gas distributed throughout the City of Lima if and to the extent that the appraised sound value of this forty-four miles of transmission main or any part thereof may be included in a rate base upon which the West Ohio Gas Company shall be entitled to earn a return.

"The record discloses that this said transmission main and the part thereof apportioned to the City of Lima and the Lima district has a gas carrying capacity far in excess of that required to deliver the amount of natural gas used for the purpose of enriching manufactured gas to the heat unit standard adopted by the company. In fact, the gas [fol. 874] carrying capacity of this, the said forty-four miles of transmission main, and the part thereof allocated to the City of Lima and the Lima district is twice that required to deliver the amount of natural gas required in the said mixed gas mixture.

"50% of this transmission main and the part thereof allocated to the City of Lima and the Lima district is not used or useful in supplying natural gas to Lima gas consumers. Therefore only 50% of the sound value of this said transmission main and the amount thereof allocated to the City of Lima and the Lima district should be included in a rate base upon which the West Ohio Gas Company shall be entitled to earn a return to be paid out of gas rates collected for the distribution of mixed gas in the City of Lima. The excess carrying capacity of this main and the amount thereof allocated to Lima and the Lima dis-

trict is reserve equipment held for the benefit of future additional consumers. Also, the inclusion of any part of the sound value of the said transmission main in a rate base upon which the company shall be entitled to earn a return penalizes gas consumers because the record does not disclose that any benefit to the company or its consumers results from the ownership of the said main vesting in the West Ohio Gas Company.

"The record discloses that the manufactured gas plant that supplies water gas which is enriched by natural gas to produce the mixed gas distributed in the Lima district is twice or more than twice the size and capacity required to furnish the amount of manufactured gas used for this purpose. Making a proper allowance for investment in reserve equipment and interpreting the aforesaid circumstance in terms most liberal to the company—33⅓% of the manufactured gas plant is property not used or useful in supplying mixed gas to consumers in Lima and the Lima district. Accordingly only 66⅔% of the sound value of this manufactured gas plant should be allowed in a rate base upon which the company shall be entitled to a return.

"The excess amount of the manufactured gas plant [fol. 875] namely, 33⅓% of the plant, represents investment in property held for the benefit of future additional consumers and therefore the sound value thereof should not be allowed in a rate base upon which the company shall be entitled to earn a return.

Most respectfully submitted, —— ——.

"HRA:FES."

[fol. 876] COMMISSION EX. 1

The Public Utilities Commission of Ohio

Columbus

Formal Case #5137

Mr. William Roger Dwyer, Chief Engineer, Office. July 20, 1931

DEAR SIR:

Assisted by Engineers Foster, Marsh, Lindersmith, Fink, and Haines I made a detailed inventory and valuation of the physical property of The West Ohio Gas Co. used and useful in rendering gas service in the City of Lima as of March 31, 1928.

A comparison of the valuations submitted by the West Ohio Gas Co. and by Allensworth, Engineer for the City of Lima, and the valuation made by the Commission Engineers, is shown below:

	Company's Reproduction Value	Allensworth's Reproduction Value	Commission's Reproduction Value
Transmission System Right-of-Way.....	$ 00	$ 00	$15,111.51
Transmission — Main.....	625,318.00	347,280.72	503,716.83
Town Border Meter and Regulator Station.....	2,550.80	2,342.34	2,179.36

	Company's Reproduction Value	Allensworth's Reproduction Value	Commission's Reproduction Value
Office Fur. & Fix.	11,816.65	11,906.46	11,900.00
Transportation Equip.	6,744.00	6,422.88	7,845.67
Manufacturing Plant—			
Land	136,850.00	115,000.00	63,750.00
Buildings	102,741.69	98,168.78	81,346.07
Apparatus	189,629.70	181,334.18	153,705.41
Yard Structures	238,998.45	228,027.36	193,190.50
Miscellaneous	55,240.40	52,920.38	42,620.11
Distribution System—			
Land	2,439.50	2,050.00	2,050.00
Buildings	2,184.45	1,701.15	1,780.91
Building Contents	4,603.12	2,181.63	3,047.11
Mains	894,904.31	756,439.53	806,671.47
Services	133,051.64	154,801.90	129,898.56
House Governors	283.34	97.75	272.84
Meters and Connections	178,490.31	157,885.31	152,321.76
Tools	3,805.74	4,086.56	3,390.05
[fol. 877]			
General Property			
Proposed Office Site—			
Land	60,928.00	00	00
Residence and Garage	15,930.00	00	00
Total Physical property	$2,666,510.10	2,122,646.93	2,174,798.16
Commission's Gen. Overhead, 7%	00	00	152,235.87
Working Capital and Supplies	100,359.00	39,563.18	63,143.00
Going Concern Value	276,687.00	00	00
Investment Bankers' Service	152,178.00	00	00
Grand Total	$3,195,734.10	2,162.210.00	2,390,177.03

The main differences in the above valuations are in the following items of property:

Transmission Right-of-Way

In the valuations submitted by the Company and by Allensworth, there is no allowance for the cost of obtaining right of way, clearing of right of way, damage to crops, property, etc. This is a necessary expense in considering the reproduction value of the property and we have allowed the customary 3% of the reproduction value of the transmission line.

Transmission Mains

The difference between the Commission and the Company in this item can be attributed to two reasons. First, the Company's inventory shows approximately 11,000 ft. in excess of the amount that our actual measurement of the

line shows; second, the unit cost per foot used by the Company is in excess of that used by us.

Allensworth used approximately the same quantities as the Company, but according to his testimony on page 781, Record of Case #5137, in answer to question of Chairman Geiger, Allensworth used the value of new steel pipe as being the equivalent of second-hand wrought iron pipe based on Allensworth's contention that the pipe laid in the line was reclaimed wrought iron pipe from another location. The portion of the transmission line allocated to Lima is based on the relation of the amount of natural gas purchased for Lima to the total amount purchased for all towns served by the line. From a point east of Kenton to the Kenton Measuring Station 52.48% is allocated to Lima and the remainder to Kenton, Cridersville, St. [fol. 878] Mary's, Wapakoneta and Celina and of the position between Kenton Measuring Station and Lima, 63.86% is allocated to Lima, the remainder to the same towns as above with the exception of Kenton which is not served from this portion of the line. We used the year period from April 1, 1927 to March 31, 1928 inclusive as a basis of arriving at the above allocation.

Manufacturing Plant Land

The value placed on the land by the Company was determined by an appraisal by five members of The Lima Realtors Association plus 19% overheads. Allensworth used the same appraisal less overheads. The Commission's value was established from information furnished by Engineer Haines.

Distribution Mains

The differences in the values of distribution mains are due mainly to the quantities of pipe used and the differences in unit costs. The Commission's Engineers basis for unit costs for excavation and backfill were determined by inspection of 101 different openings made to obtain the average depth of trench, also to determine the present condition of the mains.

Meters and Connections

The differences in the value of this account are due mainly to cost of installation and overhead percentages used.

General Property

The Proposed Office Site and the Residence and Garage items were not considered by us, being classified as not used or useful property as of March 31, 1928.

The testimony in the record of Case #5137 reveals considerable discussion as to whether the manufacturing plant and the transmission line are of greater capacity than necessary to serve the City of Lima.

It is the opinion of the Commission engineers that either the manufacturing plant or the transmission line is of sufficient capacity to serve the City of Lima.

In Rate Proceedings #2360, as of Sept. 1, 1921, The Lima Natural Gas Co. predecessor to The West Ohio Gas Co. was permitted by the Commission to amortize that portion of the transmission line allocated to Lima over a ten year period on a 4% sinking fund basis. At that time the present value of the pipe line was $312,321.00 less an estimated salvage of $120,929.00, leaving a net value of $191,-
[fol. 879] 392.00 which was to be amortized out of earnings, at the rate of $15,943.00 per year.

In advanced Utility Rate Proceeding #179, evidence was introduced showing that the pipe in the transmission line was genuine wrought iron whereas in Case #2360 the pipe was considered as steel; therefore in Case A. U. R. P. #179 the present value of the transmission line was increased to a total of $416,437.00 from which was deducted salvage value of $124,067.00, leaving a net value of $292,-370.00 to be amortized. Accordingly, the Commission in its order A. U. R. P. #179, dated April 25, 1925, found to be reasonable an annual approximation of $23,416.00 for the amortization of the said transmission line.

In the Rate Proceeding #5137, now under consideration, we have deducted the total annual amounts allowed by the Commission in case #2360 and A. U. R. P. #179 plus 4% interest compounded annually which leaves a net present value for the transmission line of $276,974.54 as of March 31, 1928. Based on the assumed natural gas maximum hourly demand of the City of Lima for enriching purposes it would be necessary to have a line of 6 in. or larger diameter to deliver gas at a pressure of 25 lbs. at Lima. We have included in the present valuation an amount of $276,974.54, which is not a sufficient amount to construct a 6 in. line. Therefore it is our opinion that the amount

included in our ...luation, assignable to Lima would not build a line greater in capacity than necessary to serve the City of Lima with its demands as of March 31, 1928.

The Manufacturing Plant of The West Ohio Gas Co. consists of the following major equipment used as follows:

2 8′ 6″ Water Gas Sets—One in operation and one hot ready to operate during peak loads.

1 9-0 Water Gas Set—Held in reserve to be used in case of a breakdown of one of the other machines.

4 Boilers—A battery of 3 150 H. P. boilers in one housing and 1 160 H. P. boiler, single setting. Two in use and two held as reserve. The reason for having two boilers in reserve is in case a party wall in the battery of three failing, two of the boilers would be forced out of service.

2 Condensers—Both condensers operating.

2 Gas Exhausters—One operating and one for stand-by.

3 Purifying Boxes—Two operating and one for stand-by.

1 Station Governor—Operating.

1 Station Booster—Operating.

2 Sturtevan Blowers—Both operating, one each on alternate weeks.

Station Meters at Plant—One operating on Blue Gas and one operating on natural gas.

3 Holders—Relief holder operating in conjunction with gas generation, 100,000 cu. ft. holder used as storage for natural gas and 1,000,000 cu. ft. holder used as storage for mixed gas.

[fol. 880] 2 Compressors—Both operating, one each on alternate weeks. Accessory Works Equipment—Either all is in fine operation or necessary as reserve for Stand-by.

At the present time The West Ohio Gas Co. is operating its ma...ufacturing plant 11 to 12 hours per day. If smaller equipment were installed the operation would of necessity be over a longer operating period, thereby entailing an increased yearly operating labor expense of from $3,000.00 to $4,000.00. It is our opinion that this saving in labor necessary for operation would be greater than the savings on the decreased investment made possible with smaller generating equipment.

On or about Oct. 1, 1930, the West Ohio Gas Co. began furnishing mixed gas to Bluffton, Columbus Grove, Ottawa, Leipsic and Delphos and as the Manufacturing Plant at

Lima is used in furnishing gas to the above mentioned towns I have allocated 15% of the manufacturing plant to the said towns.

Yours very truly, L. F. Dabe, Engineer.

LFD-DH.

[fol. 881] COMMISSION EXHIBIT 2

The Public Utilities Commission of Ohio
Columbus

Formal Case No. 5137

September 10, 1931.

Mr. Ira E. Sprankle, Supt. of Investigation, Office.

DEAR SIR:

I am returning to you herewith all papers in the matter of the appeal of The West Ohio Gas Company from Ordinance passed by the City of Lima, Ohio, March 10, 1928, Ordinance No. 2675, and designated on the docket of this Commission as Formal Proceeding No. 5137, together with copy of the report of Engineer L. F. Dabe, who assisted by Engineers Foster, March, Lindersmith, Fink and Haines made a detailed inventory and valuation of the physical property of The West Ohio Gas Company used and useful in rendering gas service in the City of Lima, Ohio, as of March 31, 1928.

You will note that Engineer Dabe finds as the Reproduction Value New of the total physical property the sum of $2,174,798.16 and the Present or Depreciated Value as of March 31, 1928 of $1,716,051.06, to which has been added the Commission's customary overheads including Working Capital and Supplies for gas properties of this size and kind, resulting in a grand total Reproduction Value New of $2,390,177.03 and a Present or Depreciated Value of $1,899,317.63.

For the information of the Commission and for comparison purposes I will say that the Reproduction Cost New Claimed by the Company was $3,195,734.10 (See Company Exhibit No. 7 Page 12) and the Present or Depreciated Value was $2,911,419.41 (See Company Exhibit No. 3).

The City claimed a Reproduction Value of $2,162,210.11 and a Present Value of $1,633,349.80.

From the above you will note that the Present Value as determined by the Engineers of this Commission was $1,012,101.78 less than that claimed by the Company and $265,967.83 more than that claimed by the City. Explanation of the main differences in the value of this property as determined by the Company, City and the Commission's Engineers will be found in Engineer Dabe's report.

[fol. 882] Considering the above facts and conditions, I would therefore recommend that the Present Value as shown by the Final Summary of Accounts attached to Engineer Dabe's report, viz. $1,899,317.63, be used as the total value of the property of The West Ohio Gas Company within the Lima District as of March 31, 1928 in connection with Formal Proceeding No. 5137.

Yours very truly, William Roger Dwyer, Chief Engineer.

WRD:HH.

[fol. 883] COMMISSION EXHIBIT 3

March 16th, 1931.

Mr. William Roger Dwyer, Chief Engineer, Office.

DEAR SIR:

Attached hereto you will please find a sketch of a section of the City of Lima, Ohio. This sketch is purporting to show the relative location of the land on which the manufacturing plant of the West Ohio Gas Company is located, also the land on which the Coon Lumber Company is located and which was considered for comparative purposes in this set up, also the land on which the Boat Manufacturing Plant is located and which is at present owned by Mr. Coon of the Coon Lumber Company, he having purchased it in the last few years.

Mr. Coon stated that he did not think that the value of $115,000.00 placed on the West Ohio Gas Company's land located at Jackson and Elm Street was exorbitant, (this was the value placed on this site by a committee of the

Lima Real Estate Board, and is a matter of record in this case No. 5137).

Mr. Coon gave as his reason for this viewpoint the following circumstances and transactions. He stated that the land on which his lumber company was located was not owned by the lumber company but that the buildings on the lumber yard site were owned by his company. He stated that he was paying $3,600.00 for the rental of the land and that in order to free himself of this yearly rental he in 1927 offered the owner $40,000.00 for this tract of land but the offer was turned down. This lot contains 40,000 square feet, which would mean that the offer represented $1.00 per square foot.

Mr. Coon also said that he purchased the site on which the Boat Manufacturing plant is located in 1926 at a cost of $25,000.00. This lot contains approximately 11,000 square feet which would represent a value of approximately $2.27 per square foot. It would be my opinion that this lot would be a more desirable location than either of the other locations, however it would be my opinion that the other two locations would be about on a par. The foregoing transactions are the only ones I could find that would aid in arriving at a value of the property under consideration.

[fol. 884] Inasmuch as there were five members of the Lima Real Estate Board who arrived at a value of $115,000.00 for the Lima Gas Company land at Jackson and Elm Street, and to properly weigh this value in the set up a value of $575,000.00 was used as the Board's value.

The value of $115,000.00 being concurred into by Harry Allensworth, City Engineer, this was used as the city's value.

Harvey Crider of the Lima Securities Company placed a value of $90,000.00 to $100,000.00 on this lot so $95,000,00 was used in this set up.

L. A. Feltz, City Loan Company	$69,000.00
Ernie Bowers, Real Estate man	25,000.00
John Boose, Real Estate man	20,000.00
Mr. Barr, Hotel man	20,000.00

Summary of these values—

Real Estate Board — 5 members	$575,000.00
Mr. Coon	115,000.00
Mr. Allensworth	115,000.00
Mr. Krider	95,000.00
Mr. Feltz	69,000.00
Mr. Bowers	25,000,00
Mr. Boose	20,000.00
Mr. Barr	20,000.00
12)	$1,034,000.00 ($86,166.66 Average

This Value of $86,166.66 would represent a value of approximately 75¢ per square foot, the Gas Company's property containing 115,000 square feet.

I respectfully submit the foregoing information to you in an effort for the Commission to arrive at a value for this property.

Yours very truly, E. Haines, Engineer.

EH:HH.

[fol. 885] Report by Commission, Engineer L. F. Dabe, Filed After Hearings on Protests Against Tentative Valuation

The Public Utilities Commission of Ohio

Columbus

Formal Case No. 5137

January 25th, 1932.

Mr. William Roger Dwyer, Chief Engineer, Office.

Dear Sir: I am returning to you herewith all papers in the matter of the appeal of The West Ohio Gas Company from the Ordinance passed by the City of Lima, Ohio, March 19, 1928, Ordinance No. 2675 fixing the maximum price to be charged for gas in the City of Lima, Ohio, for a period of five years from and after the effective date of said Ordinance. Formal Case No. 5137.

A hearing was held on this matter, Thursday, January 21, 1932, on the protests of The West Ohio Gas Company

and the City of Lima, Ohio, to the tentative valuation announced by this Commission in the order of September 15, 1931, at which time testimony was given in regard to the location of the point of charge of ownership in the natural gas transmission main extending east from Lima, Ohio, and through which natural gas is transmitted for the purpose of supplying the consumers in said city.

This point of change of ownership has been in dispute for some time and that at the time of making the inventory and appraisal of the property for the purpose of this case the Engineers who made the inventory of this line were advised that this point of change of ownership was at a certain location and were guided accordingly. However, since the completion of that valuation and the announcing of the tentitive value by the Commission, authentic information has been furnished in the form of letters from T. H. Kerr, Vice President of The Ohio Fuel Gas Company, dated October 10, 1931, and E. L. Heyser, Engineer for The West Ohio Gas Company, dated October 14, 1931, determining the location of this point to be a distance of 1553 feet east of the point previously furnished the Engineers of this Department.

At the conclusion of the hearing on the protest of the tentative valuation, the Commission stated that the tentative valuation announced Sept. 15, 1931 would be the final valuation for the purpose of this case with the one exception that the valuation should be revised to compensate for the difference existing in the aforementioned transmission line.

[fol. 886] In accordance with your instructions I have revised the valuation of this property so as to include that part of the value of the additional 1553 feet of ten inch transmission main which should be allocated to the City of Lima, Ohio. The inclusion of this value necessarily changes several accounts and items in the valuation, namely—Right of Way, Transmission Line Equipment, Total Physical Property, General Overheads, Total Fixed Capital and the Grand Total.

I have prepared and attach hereto a comparison by accounts between the tentative value announced by this Commission and the corrected value which is to be made the final value in this case, also a detailed explanation of all the changes made in the tentative valuation.

In consideration of the above facts and conditions, I would therefore recommend that the revised values as shown by the attached revised Final Summary of Accounts, the grand totals of which are Reproduction Value $2,392,-984.23, Depreciation $491,287.97, Present Value $1,901,-696.26, be referred to the Commission for their further consideration.

Yours very truly, L. F. Dabe, Engineer.

PER:HH.

[Stamp:] Approved William Royer Dwyer, Chief Engineer. Ira E. Sprankle, Supt. of Investigation.

[fol. 887]

COMPANY No. —

The West Ohio Gas Company (Lima District)

Final Summary of Accounts

No. of items	Description	Unit cost	Reproduction value	Depreciation			Total %	Total depreciation	Present value
				Wear & tear		Amortization			
				%	Amount				
	Transmission—Rights-of-Way	.....	$15,187.93	.....	.....	.....	0	0	$ 15,187.93
	Transmission—Main	.....	506,263.96	18.71	$94,703.42	$132,439.41	44.87	$227,142.83	279,121.13
	Town Border Meter and Reg. Station	.....	2,179.36	.....	.....	.....	14.23	310.21	1,869.15
	Office Furniture and Fixtures	.....	11,900.00	.....	.....	.....	7.6	904.40	10,995.60
	Transportation Equipment	.....	7,845.67	.....	.....	.....	20.00	1,569.14	6,276.53
	Manufacturing Plant—Land	.....	63,750.00	.....	.....	.....	0	0	63,750.00
	Manufacturing Plant—Buildings	.....	81,346.07	.....	.....	.....	16.186	13,166.67	68,179.40
	Manufacturing Plant—Apparatus	.....	153,705.41	.....	.....	.....	15.31	23,532.84	130,172.57
	Manufacturing Plant—Yard Structures	.....	193,190.50	.....	.....	.....	16.87	32,580.35	160,610.15
	Manufacturing Plant—Miscellaneous	.....	42,620.11	.....	.....	.....	11.09	4,724.69	37,895.42
	Distribution System—Land	.....	2,050.00	.....	.....	.....	0	0	2,050.00
	Distribution System—Buildings	.....	1,780.91	.....	.....	.....	28.73	511.64	1,269.27
	Distribution System—Building Contents	.....	3,047.11	.....	.....	.....	15.00	457.08	2,590.03
	Distribution System—Mains	.....	806,671.47	.....	.....	.....	14.32	115,536.45	691,135.02
	Distribution System—Services	.....	129,898.56	.....	.....	.....	17.00	22,082.22	107,816.34
	Distribution System—House Governors	.....	272.84	.....	.....	.....	15.00	40.93	231.91
	Distribution System—Meters and Connections	.....	152,321.76	.....	.....	.....	10.00	15,232.17	137,089.59
	Distribution System—Tools	.....	3,390.05	.....	.....	.....	40.00	1,356.02	2,034.03
	Total Physical Property	.....	2,177,421.71	.....	.....	.....	21.09	459,147.64	1,718,274.07
	Organization Interest During Construction Engineering Law Exp. During Construction Taxes During Construction Other Exp. During Construction	%	152,419.52	.....	.....	.....	21.09	32,140.33	120,279.19
	Total Fixed Capital	.....	2,329,841.23	.....	.....	.....	21.09	491,287.97	1,838,553.26
	Working Capital	.....	40,341.00	.....	.....	.....	.....	.....	40,341.00
	Materials and Supplies	.....	22,802.00	.....	.....	.....	.....	.....	22,802.00
	Grand Total	.....	2,392,984.23	.....	.....	.....	20.53	491,287.97	1,901,696.26

[fol. 888] The West Ohio Gas Company, Lima, Ohio

Formal Case No. 5137

Detailed Explanation of Changes in Tentative Valuation

Transmission Right of Way—

Reproduction Value	$76.42
Depreciation	0
Present Value	$76.42

Right of Way was computed on a percentage basis by taking 3% of the Reproduction Value of transmission mains. The Reproduction Value of transmission mains was increased $2,547.13, therefore Transmission Right of Way would be increased 3% of that amount or $76.42. Since Right of Way is not depreciable, the same increase would occur in the Present Value as in the Reproduction Value.

Transmission Mains—

Reproduction Value	$2,547.13
Depreciation	400.54
Present Value	$2,146.59

This account was increased to the extent of that part of the value of 1553 feet of transmission main which was proper to allocate to the City of Lima, Ohio. This amounted to $2,547.13 Reproduction Value made up as follows:

927 ft. 10 inch O. D. wrought iron pipe at a Reproduction Value of	$2,576.82
626 ft. 10 inch I. D. wrought iron pipe at a Reproduction Value of	1,959.20
Total	$4,536.02
Overheads on the above—7%	317.52
Total Reproduction Value	$4,853.54
Portion allocated to Lima, Ohio—52.48%	2,547.13

This amount was depreciated 15.72% amounting to $400.54 and a present value of $2,146.59.

No other physical property accounts were changed.

[fol. 889] Total Physical Property—

Reproduction Value	$2,623.55
Depreciation	400.54
Present Value	$2,223.01

Since the item of Total Physical Property is a total of all physical property accounts, the changes in this item would be a total of all the respective changes explained heretofore as follows:

Reproduction Value, $76.42, plus $2,547.13—total, $2,623.55.
Depreciation, $400.54.
Present Value, $76.42, plus $2,146.59—total, $2,223.01.

General Overheads—

Reproduction Value	$183.65
Depreciation	28.03
Present Value	$155.62

General Overheads were computed on a percentage basis by using 7% of the Total Physical Property. Since that item was increased by the amounts shown above, the item of General Overheads would be increased proportionately as follows:

7% of $2,623.55, being $183.65.
7% of $400.54, being $28.03.
7% of $2,223.01, being $155.62.

Total Fixed Capital—

Reproduction Value	$2,807.20
Depreciation	428.57
Present Value	$2,378.63

This item being a total of the items of Total Physical Property and General Overheads, would be changed to the extent of the total of the respective changes made in those two items, which are as follows:

[fol. 890] Reproduction Value, $2,623.55, plus $183.65—total, $2,807.20.

Depreciation, $400.54, plus $28.03—total, $428.57.
Present Value, $2,223.01, plus $155.62—total, $2,378.63.

Working Capital and Materials and Supplies—

In this valuation these items were determined from the records of the company and were not computed on a percentage basis, therefore the changes made in the physical property accounts did not affect these items.

Grand Total—

Reproduction Value	$2,807.20
Depreciation	428.57
Present Value	$2,378.63

This item is a total of Total Fixed Capital, Working Capital and Materials and Supplies. Since no change was made in the two latter named items, the changes in this item would be the same as those explained in Total Fixed Capital.

[fol. 891-895a

The West Ohio Gas Company, Lima, Ohio

Formal Case No. 5137

Comparison Between Tentative and Final Vlues

Account Title	Value	Tentative	Final	Difference
Transmission Right-of-Way	Reproduction	$15,111.51	$15,187.93	$76.42
	Depreciation	0	0	0
	Present	15,111.51	15,187.93	76.42
Transmission Mains	Reproduction	503,716.83	506,263.96	2,547.13
	Depreciation	226,742.29	227,142.83	400.54
	Present	276,974.54	279,121.13	2,146.59
Town Border Meter and Regulator Station	No change			
Office Furniture and Fixtures	No change			
Transmission Equipment	No change			
Manufacturing Plant—Land	No change			
Manufacturing Plant—Buildings	No change			
Manufacturing Plant—Apparatus	No change			
Manufacturing Plant—Yard Structures	No change			
Manufacturing Plant—Miscellaneous	No change			
Distribution System—Land	No change			
Distribution System—Buildings	No change			
Distribution System—Buildings Contents	No change			
Distribution System—Mains	No change			
Distribution System—Services	No change			
Distribution System—House Governors	No change			
Distribution System—Meters and Connections	No change			
Distribution System—Tools	No change			

Total Physical Property	Reproduction	2,174,798.16	2,177,421.71	2,623.55
	Depreciation	458,747.10	459,147.64	400.54
	Present	1,716,051.06	1,718,274.07	2,223.01
General Overheads	Reproduction	152,235.87	152,419.52	183.65
	Depreciation	32,112.30	32,140.33	28.03
	Present	120,123.57	120,279.19	155.62
Total Fixed Capital	Reproduction	2,327,034.03	2,329,841.23	2,807.20
	Depreciation	490,859.40	491,287.97	428.57
	Present	1,836,174.63	1,838,553.26	2,378.63
Working Capital	No change			
Materials and Supplies	No change			
Grand Total	Reproduction	2,390,177.03	2,392,984.23	2,807.20
	Depreciation	490,859.40	491,287.97	428.57
	Present	1,899,317.63	1,901,696.26	2,378.63

√ Commission Exhibit #1 of March 8, 1933

ANNUAL REPORT

OF

West Ohio Gas Company

Lima, Ohio.

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31,
1928

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1ST

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INSTRUCTIONS

This form of annual report must be filled out and returned to the office of THE PUBLIC UTILITIES COMMISSION OF OHIO, Columbus, Ohio, by March 1st next.

Heretofore, it has been customary to print on the left hand pages instructions for answering questions covered by the opposite page of the report; but the Commission is of the opinion that this is not necessary, as returns often indicate that instructions have not been read or at least have not been followed, and they are therefore omitted from this form. The respondent, however, is urged to ask for instructions should there be any item in the report that is not fully understood and upon such request any information asked for will be furnished promptly.

This report form calls for Artificial Gas, Natural Gas and Electric Light operations, and any company furnishing more than one of these classes of service will report such information as is applicable for each class.

If it is necessary or desirable to insert additional statements, typewritten or other, in this report, care should be taken that they be legibly made on paper of a durable sort and, as a rule of a size not exceeding that of a page. Inserted sheets should be securely attached, preferably at inner margin.

All entries should be made in a permanent black ink, except those of a contrary or unusual character (like deficits for example), which should be made in a permanent red ink.

Each respondent should make its annual report to this Commission in duplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason two copies of the accompanying form are sent to each company concerned.

The word "respondent," whenever used in this report, means the company in whose behalf the report is made.

Attention is called to the following sections of the General Code of Ohio:

Section 614-2. Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation wherever organized or incorporated:

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating, or power purposes to consumers within this state, is a natural gas company;

Section 614-48. Every public utility shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the Commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the Commission. The Commission may at any time, require specific answers to questions upon which it may desire information.

Section 614-65. Whoever being an officer, agent or employe in an official capacity, of a public utility or railroad defined in this act, knowingly violates any provisions of this act, or wilfully fails, omits, or neglects to obey, observe or comply with any lawful order or direction of the Commission made with respect to any public utility or railroad shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than two years, or both, and each day's continuance of such failure, omission or neglect shall constitute a separate offense.

THE INFORMATION CALLED FOR BY EACH PAGE OF THIS REPORT, UNLESS OTHERWISE INDICATED, IS TO BE REPORTED FOR THE ENTIRE COMPANY AND NOT FOR THE STATE OF OHIO ONLY

DO NOT FAIL TO MAKE RETURNS OF INTRASTATE GROSS EARNINGS ON PAGE 50

ANNUAL REPORT

OF

West Ohio Gas Company

Lima Ohio

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31,
1928

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

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HISTORY

1. Exact name of company making this report: West Ohio Gas Company

2. Date of organization: October 24 - 1924

3. Under the laws of what Government, State or Territory organized? If more than one name all. Give reference to each statute and amendments thereof: State of Ohio.

4. If a consolidated or merger company name all constituents and all merged companies. Give reference to charters or general laws governing each, and all amendments of same: The properties of the following companies were purchased by the respondent in December 1924. The Lima Natural Gas Co. The Lima Gas Light Co. The Wapakoneta Natural Gas Co., The St. Marys Gas Co. The Celina Gas Co.

5. Date and authority for each consolidation and each merger. On authority of orders 3329 and 3330 issued by the Public Utilities Commission of Ohio dated Nov 26, 1924

6. State whether respondent is a corporation, a joint stock association, a firm or partnership, or an individual. Corporation

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized and the occasion for the reorganization.

8. State whether or not, the respondent during the year conducted any part of its business under a name, or names, other than that shown, in response to inquiry No. 1, above. If so, give full particulars. No

9. Where is the plant or plants located? Lima, Coldwater, Wapakoneta, Celina, St. Marys, and Kenton Ohio.

10. Name below all classes of public service furnished by the respondent: Production and distribution of gas for domestic, commercial and industrial use in the above mentioned districts

DIRECTORS.

NAME.	POST-OFFICE ADDRESS.	DATE OF EXPIRATION OF TERM.
Samuel Insull.	122 S. Michigan Ave. Chicago Ill.	One year from Apr 16, 1928 or until successor is elected.
Samuel Insull Jr.	" "	" "
L. E. Mulholland	Ft. Wayne, Ind.	" "
E. R. Curtin	Lima, Ohio	" "
E. R. Curtin Jr.	" "	" "
H. O. Bentley	" "	" "
T. L. Price	" "	" "

PRINCIPAL OFFICERS.

TITLE	NAME.	OFFICIAL ADDRESS.
Chairman of the Board,		
President,	Samuel Insull.	Chicago Ill.
First Vice-President,	E. R. Curtin	Lima O.
Second Vice-President,	Samuel Insull Jr.	Chicago Ill.
Third Vice-President,		
Secretary,	B. J. Sherman	Chicago Ill.
Treasurer,	G. J. Mitchell	Chicago Ill.
General Solicitor,		
Attorney, or General Counsel,	H. O. Bentley	Lima Ohio.
Comptroller,	W. A. Lamed	Chicago Ill.
Assistant Comptroller,		
General Auditor,		
Assistant General Auditor,		
General Manager,	E. R Curtin	Lima, O.
Chief Engineer,		
Superintendent,		
Managing Agent for the Company in Ohio,		

Location of principal office, at Lima, County of Allen, and State of Ohio.

Officer to whom correspondence concerning this report should be addressed:

NAME.	TITLE.	ADDRESS.
E. R. Curtin	President	112 West Market St. Lima O.

4 FACTS PERTAINING TO CONTROL OF RESPONDENT.

1. Date of last meeting of stockholders for election of directors. April 16- 1928

2. Date of last closing of stock books before end of year for which this report is made. Books do not close.

3. Total number of stockholders of record at the date required in answer to Question 2

4. Has each share of stock one vote? Each share of common stock has one vote

If otherwise, explain voting rights.

5. Has any issue of securities contingent voting rights? Yes

If so, explain character of such rights. Preferred stock is entitled to vote in event of default of four quarterly dividends.

6. Has any issue of securities special privileges in the election of directors?

If so, explain character of such privileges. Holders of common stock elect ~~trustees~~ directors

7. Did any individual, association, corporation or corporations, control the respondent at close of year?

If control was so held, state: Yes.

(a) The form of control, whether sole or joint; Sole.

(b) The name of the controlling corporation or corporations;

Midland Utilities Company.

(c) The manner in which control was established;

Stock Control.

(d) The extent of control; Owns all common stock except directors qualifying shares.

(e) Whether control was direct or indirect;

Direct.

(f) The name of the intermediary through which control, if indirect, was established.

8. Did any individual, association, or corporation, as trustee, control the respondent at close of year?

If control was so held, state: No.

(a) The name of the trustee;

(b) The name of the beneficiary or beneficiaries for whom the trust was maintained.

CORPORATIONS CONTROLLED BY RESPONDENT

CORPORATIONS CONTROLLED BY RESPONDENT

NAME.	CONTROL.					
	SOLE OR JOINT.	HOW ESTABLISHED.	EXTENT.	DIRECT OR INDIRECT	IF INDIRECT, NAME OF INTERMEDIARY THROUGH WHICH CONTROL IS ESTABLISHED.	OTHER PARTIES TO AGREEMENT FOR JOINT CONTROL.
ACTIVE CORPORATIONS:			None			
INACTIVE CORPORATIONS:			None			

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6 SPECIAL TRAFFIC AGREEMENTS AND ARRANGEMENTS WITHIN THE STATE OF OHIO.

Give a list showing every agreement, arrangement, or understanding in force at any time during the year, through which agreement, arrangement, or understanding the respondent became obligated or privileged to receive from, or supply to, other corporations or persons, gas, electric energy or property, or to receive or render any service of any class which respondent is obligable or privileged to receive or render, the terms of which agreement differ in any regard whatever from those upon which any person is of common right entitled or bound to supply to, or to receive from, the respondent, gas, electric energy or property, or any service of any kind which respondent is obligable to receive or render. Show for each agreement: (1) the names and addresses of the parties thereto, (2) the date when it became effective, (3) the date when according to its terms it will expire, (4) the consideration upon which it is based, and (5) the amount of business done under it during the year. If there was no such agreement, state that fact.

None.

SHOW ARTIFICIAL GAS CUSTOMERS ON THIS PAGE

The respondent will show on this page the names of cities or villages in which it supplies artifical gas, with number of customers in each.
If any public utility product other than that designated by pages 6, 7 and 8, is supplied, name such product on this page, giving names of cities or villages supplied, with number of customers in each.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN	NUMBER OF CUSTOMERS.
		BROUGHT FORWARD,	
Lima, Ohio.	10,045		
FORWARD		TOTAL	10,045

8 SHOW NATURAL GAS CUSTOMERS ON THIS PAGE.

The respondent will show on this page the names of cities or villages in which it supplies natural gas, with number of customers in each.
If consumers are supplied outside of cities and villages in rural territory, give name of township with number of customers.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN.	NUMBER OF CUSTOMERS.
		BROUGHT FORWARD.	
Gibsonville Ohio	122		
Waynesboro Ohio	1,456		
Mt Morris Ohio	1,355		
Celina Ohio	1,007		
Kenton Ohio	1,940		
FORWARD		TOTAL	5,880

10 GENERAL BALANCE SHEET

ASSET ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. FIXED CAPITAL ACCOUNTS:		
Fixed Capital—Pages 13, 16, 18	3 519 523 32	3 519 523 32
Cost of Fixed Capital purchased		
Construction work in progress		
II. INVESTMENT ACCOUNTS:		
Investment Securities—Page 19.	50 00	50 00
Property Used in Other Public Services—Page 19.		
Advances to Affiliated Companies for Construction, Equipment, or Additions and Betterments—Page 19.		
Other Investments—Page 19.		
III. REACQUIRED SECURITIES ACCOUNTS:		
Reacquired Capital Stock	14 300 00	14 300 00
Reacquired Bonds		
IV. FUND ACCOUNTS:		
Sinking Fund Assets—Page 20		
Depreciation Fund Assets—Page 20		
Insurance and Other Reserve Fund Assets—Page 20		
V. SPECIAL DEPOSIT ACCOUNTS:		
Interest Special Deposits—Page 21		
Dividend Special Deposits—Page 21		
Other Special Deposits—Page 21	200 00	200 00
VI. CURRENT ASSET ACCOUNTS:		
Cash	24 336 08	24 336 08
Notes Receivable—Page 21	2 036 00	2 036 00
Accounts Receivable from Consumers	44 508 75	44 508 75
Accounts Receivable from Affiliated Companies—Page 21	48 03	48 03
Other Accounts Receivable	29 103 46	29 103 46
Matured Interest and Rents Receivable		
Materials and Supplies	43 981 07	43 981 07
Subscriptions to Capital Stock		
Other Current Assets	25 000 00	25 000 00
VII. ACCRUED ASSET ACCOUNT:		
Unmatured Interest and Rents Receivable		
VIII. PREPAID ACCOUNTS:		
Prepaid Insurance	1 063 32	1 063 32
Prepaid Interest		
Prepaid Taxes		
Other Prepaid Accounts		
IX. DEFERRED CHARGE ACCOUNTS:		
Discount on Capital Stock	90 167 60	90 167 60
Unamortized Debt Discount and Expense	101 440 08	101 440 08
Property Abandonment—Page 22		
Extraordinary Casualties		
Non-Productive Well Drilling Expense		
Preliminary Survey and Investigation Charges		
Other Deferred Charges	26 692 18	26 692 18
Grand Total	3 923 129 89	3 923 129 89

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GENERAL BALANCE SHEET

11

LIABILITY ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. CORPORATE CAPITAL LIABILITY ACCOUNTS:		
Capital Stock—Page 23	2 376 381 30	2 376 381 30
Installments Paid on Capital Stock Subscriptions		
Stock Liability for Conversion of Securities		
Premium on Capital Stock		
II. NON-CORPORATE PROPRIETORSHIP ACCOUNTS:		
Sole Proprietorship		
Partnership		
III. FUNDED DEBT ACCOUNTS—Page 25.		
Bonds	1 000 000 00	1 000 000 00
Real Estate Mortgages		
Advances from Affiliated Companies for Construction Equipment, or Additions and Betterments		
Other Funded Debt		
IV. CURRENT LIABILITY ACCOUNTS:		
Receiver's Certificates		
Judgments		
Workmen's Compensation		
Notes Payable—Page 25	100 000 00	100 000 00
Consumer's Deposits	43 079 11	43 079 11
Accounts Payable to Affiliated Companies—Page 25	3 386 50	3 386 50
Other Accounts Payable	47 443 53	47 443 53
Matured Funded Debt—Page 25		
Matured Interest on Funded Debt		
Matured Interest on Unfunded Debt		
Dividends Payable	30 000 00	30 000 00
Service Billed in Advance	640 11	640 11
Capital Stock Subscribed		
Other Current Liabilities		
Purchase contracts	25 000 00	25 000 00
V. ACCRUED LIABILITY ACCOUNTS:		
Unmatured Interest Accrued on Funded Debt	5 000 00	5 000 00
Unmatured Interest Accrued on Unfunded Debt	312 50	312 50
Taxes Accrued	46 582 37	46 582 37
Other Accrued Liabilities		
VI. DEFERRED CREDIT ACCOUNTS:		
Unamortized Premium on Debt		
Other Deferred Credits		
Public improvement accounts	3 001 73	3 001 73
VII. RESERVE ACCOUNTS:		
Insurance Reserve—Page 26		
Injuries and Damages Reserve—Page 26	1 610 43	1 610 43
Uncollectible Consumers' Accounts Reserve—Page 26	4 317 01	4 317 01
Depreciation of Structures and Equipment Reserve—Page 25	136 224 50	136 224 60
Amortization of ~~Other Capital Assets~~—Page 26 Transmission line	52 395 54	52 395 54
Other Reserves—Page 26		
Most main contribution	200 00	200 00
VIII. APPROPRIATED SURPLUS ACCOUNTS:		
Surplus Invested in Fixed Capital		
Funded Debt Retired through Surplus		
Surplus Reserved for Sinking Funds		
Other Surplus Reserves		
IX. UNAPPROPRIATED SURPLUS ACCOUNT:		
Corporate Surplus Unappropriated*	47 655 26	47 655 26
Grand Total	3 423 129 89	3 423 129 89

*Insert "Debit" or "Credit" as may be appropriate, showing the amount of debit in red.

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

ACCOUNT.	Balance at beginning of year	Charges for Capital added during year.	Credits made to sub-account during year.	Balance at close of year.
INTANGIBLE FIXED CAPITAL:				
1. Organization				
2. Franchises				
3. Miscellaneous intangible capital				
TANGIBLE FIXED CAPITAL:				
4. Land:				
(a) Land occupied by gas works	$ 834 37			$ 834 37
(b) Land occupied by outside holder stations				
(c) Rights of way				
(d) Water rights				
(e) General office land				
(f) Miscellaneous land devoted to gas operations				
5. Structures:				
(a) Works and station structures	38 282 56			38 282 56
(b) Holders				
(c) General office structures				
(d) Miscellaneous structures devoted to gas operations	22 330 21			22 330 21
6. Boiler plant equipment	1 743 80			1 743 80
7. Steam engines				
8. Internal combustion engines				
9. Accessory power equipment				
10. Benches and retorts				
11. Water gas sets	5 958 00			5 958 00
12. Purification apparatus				
13. Accessory works equipment	2 887 42			2 887 42
14. Mains				
15. Services				
16. Consumers' meters				
17. Consumers' Meter installation				
18. Street lighting equipment				
19. Gas appliances				

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS — (Continued)

ACCOUNT	Balance at beginning of year.	Charges for capital added during year.	Credits made to sub-account during year.	Balance at close of year.
20. General equipment:				
(a) General office equipment				
(b) Shop equipment				
(c) Stores equipment				
(d) Transportation equipment				
(e) Telephone, telegraph and wireless system				
(f) Laboratory equipment				
(g) Miscellaneous equipment				
21. Miscellaneous tangible capital				
22. Engineering and superintendence during construction				
23. Law expenditures during construction				
24. Injuries and damages during construction				
25. Taxes during construction				
26. Interest during construction				
27. Miscellaneous construction expenditures				
28. Fixed capital not classified by prescribed accounts				
29. Cost of plant and equipment purchased				
30. Unfinished Plant Investment (construction work in progress)				
Total	76,936,26			76,936,26

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FIXED CAPITAL INSTALLED PRIOR TO ~~JANUARY 1, 1921~~ December 1, 1924

Give particulars of the credits made during the year in the accounts of the respondent representing its plant and equipment installed in service prior to January 1, 1921.

If the respondent's classification of fixed capital accounts in conformity with the principles embodied in the account for Fixed Capital installed since December 31, 1920, became effective at an earlier date, the dates in the headings of the present schedule and the following schedule may be correspondingly modified.

Names of subaccounts shown in column (a) should be those carried on the respondent's books of account immediately prior to the adoption of the Uniform System of Accounts for Natural Gas Companies or its equivalent.

If the respondent's accounts representing plant and equipment installed prior to January 1, 1921, have been reclassified in accordance with the rules governing accounts for fixed capital installed since December 31, 1920, there may be shown in column (a) the names of accounts now carried on respondent's books representing such plant and equipment instead of those carried prior to the adoption of the Uniform System of Accounts for Natural Gas Companies.

In connection with the credits called for in column (c) of this schedule and column (d) of schedule on page 15, see paragraph 2, page 18, of the Uniform System of Accounts for Natural Gas Companies.

NAMES OF ACCOUNTS KEPT PRIOR TO JANUARY 1, 1921. (a)	Balance at beginning of year. (b)	Credits made to sub-accounts during year. (c)	Balance at close of year. (d)
Plant and property purchased	3,116,201.74	8,533.46	3,108,268.28
Total	3,116,201.74	8,533.46	3,108,268.28

FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1920—NATURAL GAS

ACCOUNT. (a)	Balance at beginning of year. (b)	Charges for capital added during year. (c)	Credits made to sub-account during year. (d)	Balance at close of year. (e)
I. UNDISTRIBUTED FIXED CAPITAL ACCOUNTS:				
200 Organization	28 812 73			28 812 73
201 Franchises				
202 Patent Rights and Licenses				
203 Other Undistributed Fixed Capital				
II. PRODUCTION SYSTEM PROPERTY ACCOUNTS:				
204 Land				
205 Leaseholds				
206 Rights of Way				
207 Natural Gas Rights				
208 Gas Well Structures				
209 Field Measuring Station Structures				
210 Other Production System Structures				
211 Gas Well Construction				
212 Gas Well Equipment				
213 Field Line Construction				
214 Field Line Equipment				
215 Field Measuring Station Equipment				
216 Drilling and Cleaning Equipment				
217 Other Production System Equipment				
III. TRANSMISSION SYSTEM PROPERTY ACCOUNTS:				
218 Land	515 26			515 26
219 Leaseholds				
220 Rights of Way				
221 Compressing Station Structures				
222 Transmission System Measuring Station Structures				
223 Other Transmission System Structures				
224 Compressing Station Equipment				
225 Transmission System Measuring Station Equipment				
226 Transmission Line Equipment				
227 Other Transmission System Equipment				
IV. DISTRIBUTION SYSTEM PROPERTY ACCOUNTS:				
228 Land				
229 Leaseholds				
230 Rights of Way				
231 District Regulator Structures	827 66			827 66
232 Other Distribution System Structures				
233 Gas Receivers and District Regulators	2 415 12			2 415 12
234 Distribution Line Equipment	148 750 11	12 072 61		160 822 72
235 Service Line Equipment	34 241 82	2 291 90		36 533 72
236 Meters	14 451 84	1 875 74		16 327 58
237 Meter Installation	4 327 17	1 682 55		6 009 72
238 House Regulators				
239 Other Distribution System Equipment				

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ACCOUNT. (a)	Balance at beginning of year. (b)	Credits for property added during year. (c)	Credits for property retired during year. (d)	Balance at close of year. (e)
V. UTILIZATION SYSTEM PROPERTY ACCOUNTS:				
240 Commercial Lighting System				
241 Municipal Street Lighting System				
242 Private Street Lighting System				
243 Other Utilization Equipment				
VI. GENERAL PROPERTY ACCOUNTS:				
244 General Office Land				
245 Other General Land	52 022 00			52 022 00
246 Leaseholds				
247 General Office Structures				
248 Other General Structures		639 68		639 68
249 General Office Equipment				
250 General Store Equipment	7 510 32	961 35		8 471 67
251 General Shop Equipment				
252 General Stable Equipment	595 59	539 06		1 134 65
253 General Garage Equipment				
254 General Laboratory Equipment	8 267 19	4 655 53		12 922 72
255 General Telephone and Telegraph System				
256 General Tools and Implements				
257 Other General Equipment	729 68	346 39		1076 07
VII. UNDISTRIBUTED CONSTRUCTION EXPENDITURE ACCOUNTS:				
258 Engineering and Superintendence during construction				
259 General Officers' and Clerks' salaries during construction				
260 General Officers' and Clerks' expenses during construction				
261 Office Supplies and Expenses during construction				
262 Law Expenditures during construction				
263 Injuries and Damages during construction				
264 Insurance during construction				
265 Taxes during construction				
266 Interest during construction	950 02			950 02
267 Other Expenditures during construction				
Construction work in progress	71 00			71 00
Total	302 465 51	32 753 17		335 218 68
SUMMARY OF FIXED CAPITAL:				
Installed Prior to January 1, 1921 12/1/24	3 116 801 74		1 533 46	3 115 268 28
Installed Since December 31, 1920 12/1/24	302 465 51	32 753 17		335 218 68
Total	3 419 267 25	32 753 17	1 533 46	3 449 486 96

INVESTMENT SECURITIES

NAME OF ISSUING COMPANY AND DESCRIPTION OF SECURITY HELD.	PLEDGED.		UNPLEDGED.		INCOME DERIVED			Extent of control, if control exists.
	Par value.	Book value.	Par value.	Book value.	Rate.	Amount of dividends.	Amount of interest.	
Investment of Affiliated Companies:								
			None					
Investment of Non-Affiliated Companies:								
			None					
Other Investments:								
One share no par stock of the [illegible] gasoline Co.		50.00				13.00		
Total		50.00				13.00		

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FUND ACCOUNTS

Name of Fund.	Par Value	Book Value	Amount of Fund at beginning of Year.	Additions to Fund During Year.	Withdrawals from Fund During Year.	Balance in Fund at close of Year.
Sinking Fund Assets:			None			
Depreciation Fund Assets:			None.			
Insurance and Other Reserve Fund Assets:			None.			
Total						

CASH AND SPECIAL DEPOSITS

Name of depositary.	Purpose of Deposit	Amount at close of year
Lima Trust Co. Lima O.	Operations	21,378.24
Peoples State Bank, Wapakoneta O.	"	535.04
American State Bank St. Marys O.	"	366.27
The Commercial Bank Co. Colina O.	"	320.50
The Commercial Bank. Kenton O.	"	916.03
Petty Cash Funds	"	720.00
Pay Roll Funds Lima Trust Co. Lima O.	"	200.00
	Total	24,536.08

NOTES AND ACCOUNTS RECEIVABLE

Bills Receivable. Name of debtor	Amount at close of year	*Miscellaneous Accounts Receivable. Name of debtor	Amount at close of year
Harry J. Hildreth	200.00	Acct. Rec. Mercantile	27,906.79
Chas. Wirtz	1,836.00	" " Gas Consumers	44,508.75
		" " Sundry	1,196.67
Total	2,036.00	Total	73,612.21

ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES

Name of debtor.	Character of transaction	Amount at close of year
Northern Indiana Public Service Company	Transfer of material and supplies	37.21
Insurance trustees	Adjustment of insurance premium.	10.82
	Total	48.03

*Show principal items only. Minor items may be reported in one group.

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PROPERTY ABANDONED

Items.	Year of Abandonment	Balance in Account at beginning of year	Amount Charged to Account during year	Amount Credited to Account during year	Balance in Account at close of year
Poles	1925	10 515 73			
Transportation Equipment	"	1 443 28			
Shop equipment	"	252 00		23 440 05	
Wire and fixtures	"	11 229 04			
Total		23 440 05		23 440 05	

REMARKS

CAPITAL STOCK.

CLASS OF STOCK.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. Rate	DIVIDENDS DECLARED DURING YEAR. AMOUNT.
Common	75 000	No par		75 000 shares.					62 500 00
Preferred class "A"	3 000	100 per	300 000	*300 000.			300 000		21 000 00
" " "B"	4 500	100 per	450 000	*450 000.			450 000		31 500 00
TOTAL	82 500								105 000 00

FUNDED DEBT.

DESIGNATION OF BOND OR OBLIGATION.	TERM. Date of Issue	TERM. Date Maturity	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION	INTEREST. Rate	INTEREST. When Payable.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
First and refunding 6% mortgage bonds.	12/1/24	12/1/54	1 000 000	1 000 000	None.		1 000 000	6	June 1st	60 000	60 000
TOTAL			1 000 000	1 000 000			1 000 000			60 000	60 000

*Purpose for which issue was authorized.

Receipts Outstanding at the close of the year for installments received on subscriptions for stocks were as follows:

Common stock, $; Second preferred stock, $; First preferred stock, $; Debenture stock, $; All classes, $

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SECURITY FOR FUNDED DEBT.

SECURITY FOR FUNDED DEBT.

DESIGNATION OF BOND OR OBLIGATION	PROPERTY MORTGAGED AND SECURITIES PLEDGED. DESCRIPTION.	VALUE.	REMARKS.
First and refunding mortgage bonds	Entire property.	3 579 523 52	

SUNDRY CURRENT LIABILITIES

NAME OF CREDITOR OR OBLIGATION.	CHARACTER OF TRANSACTIONS INVOLVED.	Credit balance at close of year.		
	Notes Payable			
Midland Utilities Company	Advance for construction	100	000	00
	Total,	100	000	00
	Accounts Payable to Affiliated Companies			
Non Ind. Pub. Ser. Co.	Services rendered		735	57
Insurance Trustees	Insurance Premiums		654	94
Midland Stock Transf. Co.	Services rendered			25
" Utilities Co. of Ind.	Supplies furnished		122	40
" " Co.	Services rendered	1	873	34
	Total,	3	386	50
	Matured Funded Debt			
	Total,			

DEPRECIATION OF STRUCTURES AND EQUIPMENT RESERVE

DEBIT ITEMS.					CREDIT ITEMS.				
Retirements During the Year	(X)	34	157	12	Balance at Beginning of Year		113	849	52
Other Debits:			252	00	Amount Reserved During the Year by Charges to Operating Expenses		56	770	90
(X) Includes property abandoned as shown on pag. 22					Other Credits:			13	20
Balance at Close of Year		136	224	50					
Total,		170	633	62	Total,		170	633	62

BASIS FOR DEPRECIATION RESERVE.

Explain here in detail the basis upon which the charge to operating expenses on account of depreciation is founded and also the method by which the amount in question was derived. The amount here shown will be the same as that carried to "Depreciation of Structures and Equipment Reserve" on the General Balance Sheet.

Depreciation of general property is in accordance with figure incorporated in an order of the public utilities commission of Ohio in a recent rate case

Depreciation of transportation equipment is based on actual cost less salvage amortized over the life of the equipment

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RESERVES

DEBIT ITEMS		CREDIT ITEMS	
INSURANCE RESERVES			
		Balance at Beginning of Year	
		Amount Reserved During the Year by Charges to Operating Expenses	
		Other Credits:	
		None.	
Balance at Close of Year			
Total,		Total,	
INJURIES AND DAMAGES RESERVE			
Charges accts injuries and damages expense	127 59	Balance at Beginning of Year	638 06
		Amount Reserved During the Year by Charges to Operating Expenses	999 96
		Other Credits:	
Balance at Close of Year	1 510 43		
Total,	1 638 02	Total,	1 638 02
UNCOLLECTIBLE CONSUMERS' ACCOUNTS RESERVE			
1927 worthless bills charged off	3 629 57	Balance at Beginning of Year	4 360 53
Adjusting 1927 accts.	730 96	Amount Reserved During the Year by Charges to Operating Expenses	4 317 01
		Other Credits:	
Balance at Close of Year	4 317 01		
Total,	8 677 54	Total,	8 677 54
AMORTIZATION OF OTHER CAPITAL RESERVE			
		Balance at Beginning of Year	40 587 54
		Amount Reserved During the Year by Charges to Operating Expenses	11 708 00
		Other Credits:	
Balance at Close of Year			
Total,		Total,	52 295 54
OTHER RESERVES			
		Balance at Beginning of Year	
		Amount Reserved During the Year by Charges to Operating Expenses	
		Other Credits:	
		None	
Balance at Close of Year			
Total,		Total,	

MEMORANDUM

Use this page for an explanation of any item contained in this report where sufficient space is not available.

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CORPORATE SURPLUS UNAPPROPRIATED

ITEM	DEBITS	CREDITS	REMARKS
CREDITS:			
Credit balance at beginning of year		43 422 94	
Credit balance transferred from Income Account		17 951 50	
Uncollectible Consumers' Accounts recovered			
Uncollectible Non-Operating Revenues recovered			
Other Additions to Surplus			
Miscellaneous Credits		2 440 96	
DEBITS:			
Debit balance at beginning of year			(X) Adjusting unbilled income for 12/31/28.
Debit balance transferred from Income Account			
Surplus Appropriated for Sinking Funds			
Surplus Appropriated for Other Reserve Funds			
Surplus Appropriated for Dividends—Page 28			
Surplus Appropriated for Investment in Fixed Capital			
Gifts to Affiliated Companies			
Expenses unprovided for elsewhere			
Amortization unprovided for elsewhere			
Other Appropriations of Surplus			
Other Deductions from Surplus (X)	12 140 00		
Uncollectible Consumers' Accounts—Old Year			
Uncollectible Non-Operating Revenues—Old Year			
Miscellaneous Debits	4 020 14		
Balance carried forward to Balance Sheet	47 655 26		
Total	63 815 40	63 815 40	

DIVIDENDS DECLARED DURING THE YEAR

NAME OF SECURITY ON WHICH DIVIDEND WAS DECLARED	Rate Per Cent. Regular.	Rate Per Cent. Extra.	Par value of amount on which dividend was declared.	*Amount of dividend.	Date. Declared.	Date. Payable.
Dividends Charged to Income:						
Class "A" preferred stock - quarterly	1¾		300 000 00	5 250 00	1/25/28	2/1/28
" " " " "	1¾		300 000 00	5 250 00	4/14/28	5/1/28
" " " " "	1¾		300 000 00	5 250 00	7/24/28	8/1/28
" " " " "	1¾		300 000 00	5 250 00	10/24/28	11/1/28
" "B" "	3 92		450 000 00	15 750 00	7/20/28	9/1/28
" " "	3 92		450 000 00	15 750 00	9/28/28	12/1/28
Common stock 10% for share.				7 500 00	4/24/28	5/25/28
20% " "				15 000 00	8/17/28	10/20/28
40% " "				30 000 00	12/17/28	1/01/29
Total Charged to Income				105 000 00		
Dividends Charged to Surplus:						
Total Charged to Surplus:						
Grand Total				105 000 00		

*Total of this column should correspond with like item on page 23.

+663

INCOME ACCOUNT
(Entire Company)

ACCOUNT.	AMOUNT	REMARKS
I. OPERATING INCOME:		
1. Operating Revenues—Page 30	739 154 77	
2. Operating Expenses—Pages 32-36-40	480 824 78	
3. *Net Operating Revenue	258 029 79	
II. NON-OPERATING REVENUES AND EXPENSES		
4. Revenues—Page 41	56 469 11	
5. Expenses—Page 41	56 165 90	
6. *Net Non-Operating Revenue	294 21	
7. *Total Net Operating Income (Total Items 3 & 6)	259 323 00	
8. Taxes Assignable to Operations—Page 43	57 198 72	
9. *Gross Income (Item 7 less Item 8)	200 124 28	
III. GROSS INCOME DEDUCTIONS.		
10. Rent for Lease of Public Utility Properties—Page 44		
11. Joint Facility Rent		
12. Other Rent Deductions		
13. Interest Accrued on Funded Debt—Page 23	60 000 00	
14. Interest Accrued on Unfunded Debt	12 297 06	
15. Guaranties of Periodic Payments		
16. Loss on Operations of Others		
17. Other Contractual Deductions from Income		
18. Amortization of Debt Discount and Expense	3 707 74	
19. Amortization of Interests in Landed Capital		
20. Other Deductions from Income	665 98	
21. Amortization of Premium on Debt		
22. Total Deductions from Gross Income	77 370 78	
23. *Net Income (Item 9 less Item 22)	122 753 50	
IV. NET INCOME APPROPRIATIONS		
24. Net Income Appropriated for Sinking Funds—Page 45		
25. Net Income Appropriated for Depreciation Reserve Fund—Page 45		
26. Net Income Appropriated for Other Reserve Funds—Page 45		
27. Net Income Appropriated for Dividends—Page 28	104 902 00	
28. Net Income Appropriated for Investment in Fixed Capital—Page 45		
29. Total Appropriations of Income	104 902 00	
30. *Balance transferred to surplus—Page 28 (Item 23 less Item 29)	17 851 50	

31. The operating revenues and expenses above stated relate to the period beginning _____ 19__ and ending _____ 19__

*If deficit, in Red.

30 ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—OPERATING REVENUES

ACCOUNT.	CLASS.			AMOUNT.			REMARKS.
ARTIFICIAL GAS REVENUES:							
1. Metered Domestic and Commercial Sales	A	B	C	481	911	00	
2. Metered Industrial Sales	A	B	C	22	372	14	
3. Metered Sales for Municipal Street Lighting	A	B	C		—		
4. Metered Sales for Other Municipal Purposes	A	B	C	2	447	81	
5. Metered Sales to Other Gas Utilities	A	B	C				
6. Flat-Rate Sales to General Consumers	A	B	C				
7. Flat-Rate Sales for Municipal Street Lighting	A	B	C				
8. Flat-Rate Sales for Other Municipal Purposes	A	B	C				
9. Prepaid Gas Sales	A	B	C				
10. Commissions on Others' Gas	A	B	C				
11. Consumers' Discounts Forfeited and Penalties Imposed	A	B	C				
Heaven Heating				4	304	13	
Total Artificial Gas Revenues				511	105	08	
NATURAL GAS REVENUES:							
1. Metered Private Sales			C				
2. Metered Domestic and Commercial Sales	A	B		224	299	81	
3. Metered Industrial Sales	A	B		3	416	72	
4. Other Metered Private Sales	A	B					
5. Metered Sales of Other Natural Gas Utilities			C				
6. Metered Sales to Affiliated Natural Gas Utilities	A	B					
7. Metered Sales to Non-affiliated Natural Gas Utilities	A	B					
8. Metered Public Sales	A	B	C		707	98	
9. Unmetered Private Sales Heaven Heating			C		127	18	
10. Unmetered Domestic and Commercial Sales	A	B					
11. Unmetered Industrial Sales	A	B					
12. Unmetered Sales for Lighting Private Streets	A	B					
13. Other Unmetered Private Sales	A	B					
14. Unmetered Sales to Other Natural Gas Utilities			C				
15. Unmetered Sales to Affiliated Natural Gas Utilities	A	B					
16. Unmetered Sales to Non-affiliated Natural Gas Utilities	A	B					
17. Unmetered Public Sales			C				
18. Unmetered Sales for Municipal Street Lighting	A	B					
19. Unmetered Sales for Other Municipal Uses	A	B					
20. Consumers' Discounts Forfeited and Penalties Imposed	A	B	C				
21. Allowances to Consumers	A	B	C				
Total Natural Gas Revenues				229	749	69	
ELECTRIC REVENUES:							
1. Municipal Light and Power Revenues			C				
2. Municipal Street Lighting—Arc	A	B					
3. Municipal Street Lighting—Incandescent	A	B					
4. Other Municipal Light and Power Revenues—Metered	A	B					
5. Other Municipal Light and Power Revenues—Flat-Rate	A	B					
6. Private Light and Power Revenues			C				
7. Residence Light and Power Revenues—Metered	A	B					
8. Residence Light and Power Revenues—Flat-Rate	A	B					
9. Commercial Light and Power Revenues—Metered	A	B					
10. Commercial Light and Power Revenues—Flat-Rate	A	B					
11. Miscellaneous Electric Revenues			C				
12. Sales to Other Public Utilities	A	B					
13. Other Miscellaneous Electric Revenues	A	B					
Total Electric Revenues							
Grand Total Operating Revenues				739	854	77	

OPERATING EXPENSES — ARTIFICIAL GAS
(Entire Company)

ACCOUNT.	AMOUNT.		
I. Production Expenses:			
1. Works Superintendence,	2	282	90
2. Works Labor,	1	804	75
3. ~~Boiler Fuel~~, Holder stock adjustment		15	30
4. ~~Water~~, Duplicate production charges (or)		476	01
5. ~~Fuel Under Retorts~~, Steam expense apportioned	13	7[illegible]	5[illegible]
6. ~~Coal Carbonized~~, Generator labor	3	[illegible]	[illegible]
7. ~~Coal-Gas Enrichers~~, Purification labor		[illegible]	[illegible]
8. Generator Fuel,	24	721	42
9. Water-Gas Oil,		436	03
10. Purifying Supplies,			
11. Miscellaneous Works Expense,	1	265	25
12. Gas Storage,		910	66
13. Gas from Other Sources,			
14. Works and Station Structures — Maintenance,		739	35
15. Power-Plant Equipment — Maintenance,		300	93
16. Gas Apparatus — Maintenance,	3	381	96
17. Works Tools — Maintenance,		93	83
Total Production Expenses,	57	526	91
II. Transmission and Distribution Expenses: Duplicate Dist'br charge (credit)		172	09
18. Transmission Pumping,	3	641	88
19. Distribution Superintendence,	3	620	71
20. Distribution Supplies and Expenses, and operating labor	2	471	24
21. Gas Meter and Installation Work,	6	152	71
22. Work on Consumers' Premises,	10	005	03
23. Gas Mains and Services — Maintenance,	8	276	23
24. Gas Meters — Maintenance,	7	343	81
25. Distribution Tools — Maintenance; and building and shop		291	66
26. Gas Appliances — Maintenance,		802	73
Total Transmission and Distribution Expenses,	42	182	21
III. Street and Park Lighting Expenses:			
27. Street Lamp Operation,			
28. Street Lamps — Maintenance,			
Total Street and Park Lighting Expenses,			
IV. Commercial Expenses:			
29. Commercial Administration,	13	747	14
30. ~~Advertising~~, Meter reading	4	099	34
31. Other Commercial Expenses,	4	471	00
Total Commercial Expenses,	22	317	48
IV-A.			
Natural gas purchased.	93	764	46

32 OPERATING EXPENSES—ARTIFICIAL GAS—(Concluded.)
(Entire Company)

ACCOUNT.	AMOUNT.			
V. NEW BUSINESS EXPENSES:				
32. New business salaries			774	19
33. New business supplies and expenses Demonstration		1	434	91
34. Advertising supplies and expenses		1	920	23
35. Canvassing and soliciting		6	446	10
36. Miscellaneous new business supplies and expenses			570	41
Total New Business Expenses		10	645	94
VI. GENERAL AND MISCELLANEOUS EXPENSES:				
37. Salaries and expenses of general officers		9	747	98
38. Salaries and expenses of general office clerks		7	968	33
39. General office supplies and expenses		2	724	88
40. General law expenses			477	02
41. Miscellaneous general expenses		13	187	94
42. Insurance		3	197	44
43. Relief department ~~and pensions~~ and employes welfare			716	31
44. Gas franchise requirements Indirect charge to Construction (Cr.)		1	868	12
45. Uncollectible Consumers' Accounts		2	830	02
46. ~~Residuals expense~~ Insurance expense			232	01
47. General amortization				
48. Injuries to persons and property			687	58
49. Stationery and printing			447	28
50. ~~Store expenses~~ Duplicate miscellaneous charges			754	51
51. ~~Stable expenses~~ Regulatory commission expenses			470	05
52. Miscellaneous adjustments—Balance			86	40
53. General structures—Maintenance			200	45
Total General and Miscellaneous Expenses		39	950	26
Recapitulation of Operating Expenses:				
I. Production		57	626	91
II. Transmission and Distribution		42	983	21
III. Street and Park Lighting Natural gas purchased		93	764	46
IV. Commercial		22	317	48
V. New Business		10	645	94
VI. General and Miscellaneous		39	950	26
		267	188	26

NATURAL GAS—OPERATING EXPENSES
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.
	A. PRODUCTION SYSTEM ACCOUNTS:				
	Operating Labor		B	C	
350	Superintendence	A			
351	Gas Well and Field Line Labor	A			
352	Field Measuring Station Labor	A			
353	Other Labor	A			
	Operating Supplies and Expenses		B	C	
354	Superintendence Supplies and Expenses	A			
355	Gas Well and Field Line Supplies and Expenses	A			
356	Field Measuring Station Supplies and Expenses	A			
357	Production System Rent	A			
358	Other Supplies and Expenses	A			
359	Gas Well Royalties	A	B	C	
360	Rental on Unoperated Leases	A	B	C	
	Maintenance of Production System Structures		B	C	
361	Maintenance of Gas Well Structures	A			
362	Maintenance of Other Production System Structures	A			
	Maintenance of Production System Equipment			C	
	Maintenance of Gas Well and Field Line Equipment		B		
363	Maintenance of Gas Well Equipment	A			
364	Maintenance of Field Line Equipment	A			
365	Abandoning Wells and Changing Field Lines	A			
	Maintenance of Other Production System Equipment		B		
366	Maintenance of Field Measuring Station Equipment	A			
367	Maintenance of Drilling and Cleaning Equipment	A			
368	Maintenance of Other Production Equipment	A			
	Total Production Expenses				
	B. NATURAL GAS PRODUCED BY OTHERS:				
369	Natural Gas Purchased for Resale	A	B	C	99 649 64
370	Purchased Gas Expense	A	B	C	
	Total Produced Expense				
	C. TRANSMISSION SYSTEM ACCOUNTS:				
	Operating Labor		B	C	
371	Superintendence	A			
372	Compressing Station Labor	A			
373	Measuring Station Labor	A			
374	Transmission Line Labor	A			
375	Other Transmission System Labor	A			
	Operating Supplies and Expenses		B	C	
376	Superintendence Supplies and Expenses	A			
377	Compressing Station Supplies and Expenses	A			124 23
378	Measuring Station Supplies and Expenses	A			
379	Transmission Line Supplies and Expenses	A			
380	Transmission System Rent	A			
381	Other Transmission System Supplies and Expenses	A			
	Maintenance of Transmission System Structures		B	C	
382	Maintenance of Compressing Station Structures	A			
383	Maintenance of Other Transmission System Structures	A			
	Maintenance of Transmission System Equipment			C	
384	Maintenance of Compressing Station Equipment	A	B		
	Maintenance of Transmission Lines		B		
385	Maintenance of Transmission Line Equipment	A			
386	Changing Transmission Lines	A			
	Maintenance of Other Transmission System Equipment		B		
387	Maintenance of Measuring Station Equipment	A			
388	Maintenance of Other Transmission Equipment	A			
	Total Transmission Expenses				124 23

NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.		
	D. DISTRIBUTION SYSTEM ACCOUNTS:						
	Operating Labor		B	C			
389	Superintendence	A			5	035	29
390	Distribution Line Labor and expenses	A			1	274	10
391	Labor Removing and Resetting Meters and House Regulators	A			1	524	71
392	Labor Inspecting and Testing Meters and House Regulators	A					
393	Other Meter Department Labor	A					
394	Other Distribution System Labor	A					
	Operating Supplies and Expenses		B	C			
395	Superintendence Supplies and Expenses	A					
396	Distribution Line Supplies and Expenses	A					
397	Meter Department Supplies and Expenses	A					
398	~~Distribution System Rent~~ Work on consumers' premises	A			1	072	27
399	Other Distribution System Supplies and Expenses	A			1	706	16
400	Maintenance of Distribution System Structures	A	B	C			
	Maintenance of Distribution System Equipment			C			
	Maintenance of Distribution System Lines		B				
401	Maintenance of Distribution Line Equipment	A			1	059	13
402	Changing Distribution Lines	A					
403	Maintenance of Service Line Equipment	A				544	50
	Maintenance of Meters and House Regulators		B				
404	Maintenance of Meters	A			1	875	07
405	Maintenance of House Regulators	A					
	Maintenance of Other Distribution System Equipment		B				
406	~~Maintenance of Gas Receivers and District Regulators~~ Dup. dist. stg (Cr.)	A				53	68
407	Maintenance of Other Distribution Equipment and gas appliances	A				263	54
	Total Distribution Expenses				14	301	09
	E. UTILIZATION SYSTEM ACCOUNTS:						
	Operating Labor		B	C			
408	Commercial Lighting System Labor	A					
409	Municipal Street Lighting System Labor	A					
410	Private Street Lighting System Labor	A					
411	Consumer's Premises Labor	A					
	Operating Supplies and Expenses		B	C			
412	Commercial Lighting System Supplies and Expenses	A					
413	Municipal Street Lighting System Supplies and Expenses	A					
414	Private Street Lighting System Supplies and Expenses	A					
415	Consumers' Premises Supplies and Expenses	A					
	Maintenance of Utilization System Equipment		B	C			
416	Maintenance of Commercial Lighting System	A					
417	Maintenance of Municipal Street Lighting System	A					
418	Maintenance of Private Street Lighting System	A					
419	Maintenance of Other Utilization Equipment	A					
	Total Utilization Expenses						
	F. COMMERCIAL DEPARTMENT ACCOUNTS:						
420	Operating Labor	A	B	C	6	687	49
421	Operating Supplies and Expenses	A	B	C	3	589	16
	Total Commercial Expenses				10	276	65
	G. NEW BUSINESS DEPARTMENT ACCOUNTS:						
	New Business Salaries and Commissions		B	C			
422	New Business Salaries	A				737	81
423	~~New Business Commissions~~ Demonstrations	A				318	50
424	New Business Supplies and Expenses	A	B	C		100	94
425	~~New Business Piping Labor~~ Advertising	A	B	C		718	85
426	~~New Business Piping Supplies and Expenses~~ Conferring & soliciting	A	B	C		461	77
	Total New Business Expenses				2	332	87

	ACCOUNT.	CLASS.			AMOUNT.		
	H. GENERAL ADMINISTRATIVE ACCOUNTS:						
	General Administrative Salaries		B	C			
427	Salaries of General Officers	A			4	418	74
428	Salaries of General Office Clerks	A			3	628	74
	General Administrative Supplies and Expenses			C			
	General Administrative Supplies		B				
429	General Office Stationery and Printing	A				191	23
430	Other General Office Supplies	A			1	241	97
	General Officers' and General Office Clerks' Expenses		B				
431	General Officers' Expenses	A					
432	General Office Clerks' Expenses	A					
	Other General Administrative Expenses		B				
433	General Law Expenses	A				218	71
434	General Office Rent	A					
435	Other General Office Expenses	A					
436	Maintenance of General Office Structures	A	B	C		89	81
437	Maintenance of General Office Equipment	A	B	C			
	Total Administrative Expenses				9	784	28
	I. OTHER GENERAL EXPENSE ACCOUNTS:						
	General Labor			C			
438	Store Labor	A	B				
	Stable and Garage Labor		B				
439	Stable Labor	A					
440	Garage Labor	A					
	Shop and Laboratory Labor		B				
441	Shop Labor Laundry expense	A				108	83
442	Laboratory Labor	A					
443	Telephone and Telegraph System Labor	A	B				
	General Supplies and Expenses			C			
444	Store Supplies and Expenses	A	B				
	Stable and Garage Supplies and Expenses		B				
445	Stable Supplies and Expenses	A					
446	Garage Supplies and Expenses	A					
	Shop and Laboratory Supplies and Expenses		B				
447	Shop Supplies and Expenses	A					
448	Laboratory Supplies and Expenses	A					
449	Telephone and Telegraph System Supplies and Expenses	A	B				
450	Natural Gas Franchise Requirements	A	B	C			
451	(See Gross Income Deduction Account No. 609A)						
452	Uncollectible Consumers' Accounts	A	B	C	1	350	12
	Other General Expenses			C			
453	Public Utilities Commission Expense	A	B		4	575	05
	Insurance Relief and Pension Expense		B				
454	Injuries and Damages	A				312	38
455	Other Insurance	A				826	50
456	Relief and Pensions Employees welfare	A				215	14
457	Other General Expense	A	B		5	867	13
	Amount Carried Forward				13	355	15

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NATURAL GAS—OPERATING EXPENSES—(Concluded)
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.		
	Amount Brought Forward				13	355	15
	General Adjustments			C			
458	Inventory Adjustments	A	B			41	01
459	~~Discount on Materials and Supplies~~ Indirect chgs. to constr. (credit)	A	B			736	07
460	~~Utility's Natural Gas Used in Operations~~ Dup. misc. charges (cr.)	A	B			757	11
461	Free Municipal Natural Gas Service	A	B				
	Maintenance of General Structures		B	C			
462	Maintenance of General Store Structures	A					
463	Maintenance of General Stable Structures	A					
464	Maintenance of General Garage Structures	A					
465	Maintenance of General Shop Structures	A					
466	Maintenance of General Laboratory Structures	A					
467	Maintenance of other General Structures	A					
	Maintenance of General Equipment		B	C			
468	Maintenance of General Store Equipment	A					
469	Maintenance of General Stable Equipment	A					
470	Maintenance of General Garage Equipment	A					
471	Maintenance of General Shop Equipment	A					
472	Maintenance of General Laboratory Equipment	A					
473	Maintenance of General Telephone and Telegraph System	A					
474	Maintenance of other General Equipment	A					
475	Depreciation	A	B	C	53	639	00
476	Extraordinary Depreciation	A	B	C			
477	Amortization of ~~Franchises, Patent Rights and Licenses~~ Pipe line	A	B	C	11	708	00
478	Amortization of Natural Gas Rights and Leases	A	B	C			
479	Joint Operating Expenses Transferred	A	B	C			
	Total Other General Expenses				77	167	96
	RECAPITULATION OF OPERATING EXPENSES:						
	A. Production Expenses	A	B	C			
	B. Natural Gas Produced by Others	A	B	C	99	649	64
	C. Transmission Expenses	A	B	C		124	23
	D. Distribution Expenses	A	B	C	14	301	09
	E. Utilization Expenses	A	B	C			
	F. Commercial Expenses	A	B	C	10	276	65
	G. New Business Expenses	A	B	C	2	332	87
	H. Administrative Expenses	A	B	C	9	784	28
	I. Other General Expenses	A	B	C	77	167	96
	Grand Total Operating Expenses				213	636	72

933 = 937

ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—NON-OPERATING REVENUE AND EXPENSE ACCOUNTS

ACCOUNT	CLASS	AMOUNT.	REMARKS
NON-OPERATING REVENUE ACCOUNTS:			
1. Merchandise Sales	A B C	46,693 57	
2. Jobbing Work Revenue	A B C	6,115 51	
3. Rents from Lease of Public Utility Properties—Page 42	A B C		
4. Rents from Lease of Other Properties—Page 42	A B C		
5. Joint Facility Rent	A B C		
6. Interest from Investment Securities	A B C		
7. Interest from Other Sources	A B C	1,170 62	
8. Dividends on Investment Securities	A B C		
9. Sinking Fund Revenues	A B C		
10. Depreciation Fund Revenues	A B C		
11. Insurance and Other Reserve Fund Revenues	A B C		
12. Profit from Operations of Others—Page 42	A B C		
13. Sub-Utility Revenues—Page 42	A B C	780 00	
14. Oil Revenue	A B C		
15. Gasoline Revenue	A B C		
16. Other Non-Operating Revenues	A B C	2,209 71	
Total Revenues (Carry to page 29)		56,969 11	
NON-OPERATING EXPENSE ACCOUNTS:			
1. Merchandise Sales Expense	A B C	52,066 45	
2. Jobbing Work Expense	A B C	4,609 45	
3. Lease of Public Utility Properties Expense	A B C		
4. Lease of Other Properties Expense	A B C		
5. Interest Expense	A B C		
6. Dividend Expense	A B C		
7. Expense of Procuring Profits from Operations of Others	A B C		
8. Sub-Utility Expense—Page 42	A B C		
9. Non-Operating Taxes	A B C		
10. Uncollectible Non-Operating Revenues	A B C		
11. Oil Expense	A B C		
12. Gasoline Expense	A B C		
13. Other Non-Operating Expense	A B C		
Total Expenses (Carry to page 29)		56,675 90	

SUB-UTILITY AND OUTSIDE OPERATIONS

If any Public Utility service is conducted other than that of Artificial Gas, Natural Gas or Electric Light, show Revenues and Expenses of such Sub-Utility hereunder.

CLASS OF OPERATION.	GROSS REVENUE	EXPENSE	NET REVENUE OR DEFICIT
None			
TOTAL.			

RENT REVENUES FROM LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

DESCRIPTION OF PROPERTY		Name of present leaseholder.	Rent accrued during year.
Name.	Location.		
Property purchased for office site.	319 West Market Street Lima O.	Jacob Pieper.	780 00
TOTAL.			780 00

PROFITS AND LOSSES FROM OPERATIONS OF OTHERS

Description of Property Operated.	Location of Property.	Name of operator.	Accrued to Respondent.	
			Profit.	Loss.
None				
		TOTAL.		

TAXES AND ASSESSMENTS

KIND OF TAX.	Taxes assessed or accrued during year.						Taxes paid during year.					
	Ohio.			Entire.			Ohio.			Entire.		
On the Value of Real and Personal Property Used in Operation	32	219	66	32	219	66	44	353	58	44	353	58
On Real Property Not Used in Operation		978	00		978	00		897	58		897	58
On Gross Receipts—Excise Tax	10	538	22	10	538	22	10	538	22	10	538	22
Public Utilities Commission Maintenance		422	85		422	85		422	85		422	85
Domestic Corporation												
Franchises												
Internal Revenue, U. S. Government												
Federal Income and Excess Profits	15	039	99	15	039	99	4	485	39	4	485	39
Federal on Bond Coupon												
Federal Capital Stock												
Miscellaneous (Specify)												
Total	57	198	72	57	198	72	60	697	62	60	697	62

REMARKS

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RENT DEDUCTIONS FOR LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

Description of Property. NAME.	Name of lessor or reversioner.	Total rent accrued during year.	Classification of Rent. Guaranteed interest on bonds.	Guaranteed dividends on stocks.	Cash.
	None				
	Total,				

ABSTRACTS OF LEASEHOLD CONTRACTS.

Give brief abstracts of the terms and conditions of the leases under which the respondent holds the properties above named, showing particularly (1) the date of the lease, (2) the chain or title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

None

FRANCHISES ACQUIRED DURING THE YEAR.

Name of Original Grantor.	Date of grant.	Term in years.	Territory covered.	Operations covered.	Date of acquisition by respondent.	Date of authorization.	Actual money cost to respondent.	Amount at which carried on Balance Sheet
			None					

If the respondent did not acquire any of the above franchises directly from the original grantor thereof, show the chain of title connecting the original grantor and the respondent.

None

APPROPRIATIONS OF INCOME AND SURPLUS TO SINKING AND DEPRECIATION RESERVE FUNDS

Name and purpose of sinking or depreciation fund.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL		

APPROPRIATIONS OF INCOME AND SURPLUS FOR INVESTMENT IN FIXED CAPITAL

Name and purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL		

OTHER RESERVE FUND APPROPRIATIONS OF INCOME AND SURPLUS

Purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL		

Here present statements as follows: 1. All Extensions of the Respondent's Business with Other Companies. 2. All Companies from which the Respondent's Business was Withdrawn. 3. All important Purchases of Equipment for new lines. 4. All other important Physical Changes. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Funded Debt issued. 8. All changes in the respondent's holdings of Stocks and Funded Debt. 9. All other important Financial Changes.

None

CONTRACTS, AGREEMENTS, ETC., WITHIN OHIO.

Here give a concise statement of all Contracts, Agreements, etc., with other Companies or persons, concerning the conduct of the business of the respondent, which became effective during the year covered by this report.

None

GENERAL INFORMATION—ARTIFICIAL GAS COMPANIES

*1. If any gas purchased from other gas companies during year, state:

Name of Company.	Number Cubic Feet	Price per M.	Amount Paid.
The Ohio Fuel Gas Co. successor to The Ohio Public Service Co.	170,480,839	.55[F]	93,764.46

2. Number cubic feet gas produced during year: (a) Ohio, 257,317,000 (artificial)
(b) Entire Company, 257,317,000 "

3. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and Commercial Sales,	369,172,300
(b) Sales to factories and industries,	26,934,600
(c) Public sales (municipalities, etc.)	2,376,600
(d) Miscellaneous gas sales, Home Heating Equipment	5,706,400
(e) Sales to other gas companies,	2,077,300
Total cubic feet distributed	406,267,200

*4. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.
None			

5. Number cubic feet gas brought into Ohio, None

6. Number cubic feet gas sold outside of Ohio, None

7. State kind of gas supplied and process of manufacture, Mixed gas (natural and artificial to Lima carburetted water gas.

*If any contracts in effect providing for a maximum or minimum price, they should be explained on page 4.

1. Number of gas wells owned: (a) Ohio, None
(b) Entire Company, None
2. Number of gas wells leased and names of lessors, None
3. Number of acres under lease in Ohio at close of year, None
4. If any gas purchased from other companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Paid
The Ohio Fuel Gas Co successor to The Ohio Public Service Co.	181,181,143	.55¢	99,649.64

5. Number cubic feet gas produced during year: (a) Ohio, None
(b) Entire Company,
6. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and commercial sales,	152,792,700	
(b) Sales to factories and industries,	3,319,800	
(c) Public sales (municipalities, etc.),	543,600	
(d) Miscellaneous gas sales, None Heating	156,600	
(e) Sales to other gas companies, Compressor	487,200	
Total cubic feet distributed,		157,369,900

7. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.
None			

8. Number cubic feet gas brought into Ohio, None
9. Number cubic feet gas sold outside of Ohio, None
10. Number of gallons of gasoline produced during year, None
11. Number new wells drilled during year:

	Productive	Non-Productive	Total.
(a) Ohio,	None		
(b) Entire Company,			

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

GENERAL INFORMATION—ELECTRIC LIGHT COMPANIES

1. Number of Stations:

2. Capacity of each station in K. W. hours:

(a) A. C.

(b) D. C.

Total capacity

3. Transmission voltage,

4. Distribution voltage,

*5. If any current purchased from other companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount paid.

Not applicable

6. Number of K. W. hours produced during year. (a) Ohio

(b) Entire Company

7. Number of K. W. hours distributed during year in Ohio:

(a) Domestic and commercial sales,

(b) Sales to factories and industries,

(c) Public sales (municipalities, etc.)

(d) Miscellaneous electric sales,

(e) Sales to other electric companies,

Total K. W. hours distributed,

*8 If any current sold to other electric utility companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount Received.

9. Number of meter customers.

10. Number of Flat Rate customers.

11. Is current furnished for light during day time?

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

STATEMENT OF INTRASTATE GROSS EARNINGS FOR OHIO FOR THE YEAR COVERED BY THIS REPORT

("Intrastate" means from one point in Ohio to another point in Ohio, or wholly within Ohio.)

Attention is called to Section 606 of the General Code of Ohio, which reads as follows:

SEC. 606. For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment appropriated by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.

TO THE PUBLIC UTILITIES COMMISSION OF OHIO:

For the uses and purposes designated in Section 606 of the General Code of Ohio:

We, the undersigned, E. R. Curtis, President,

and F. L. Pringle, asst. Secretary,

of _____

(Full name of respondent.)

on our oath do severally say that the amount of Intrastate Gross Earnings for the State of Ohio, for the year covered by this report, is $ [illegible]; that the same has been prepared under our direction from the original books, papers, and records of said company; that we have carefully examined the same, and declare the same to be a complete and correct statement in respect to each and every matter which should be included in Intrastate Gross Earnings, during the period for which said return is made, to the best of our knowledge, information and belief.

E. R. Curtis
President.

F. L. Pringle, asst.
Secretary.

SUBSCRIBED AND SWORN TO before me this 27 day of Feb., 1929

Alma Harlan
Notary Public

Notary seal
Co. seal.

VERIFICATION.

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

OATH.

(To be made by the officer having control of the accounting of the respondent.)

State of Ohio } ss.
County of Allen }

E. R. Curtin & F. L. Pringle makes oath and says that he is President & Asst Secy.
(Insert here the name of the affiant.) (Insert here the official title of the affiant.)

of West Ohio Gas Company.
(Insert here the exact legal title or name of the respondent.)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Public Utilities Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent

during the period of time from and including _____, 19__, to and including _____, 19__

E. R. Curtin & F. L. Pringle
(Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this 27 day of February, 1929

My commission expires _____ [Use an in-L. S. pression seal]

_____
(Signature of officer authorized to administer oaths.)

O seal notary
O seal company

SUPPLEMENTAL OATH.

(By the president or other chief officer of the respondent.)

State of _____ } ss.
County of _____ }

_____ makes oath and says that he is _____
(Insert here the name of the affiant.) (Insert here the official title of the affiant.)

of _____
(Insert here the exact legal title or name of the respondent.)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above named respondent during the period of time from

and including _____, 19__, to and including _____, 19__

_____
(Signature of affiant.)

Subscribed and sworn to before me, a _____, in and for the State and county above named, this _____ day of _____, 19__

My commission expires _____ [Use an in-L. S. pression seal]

_____
(Signature of officer authorized to administer oaths.)

ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC LIGHT COMPANIES CLASS A, B and C

Commission Exhibit #2 of March 8, 1933

ANNUAL REPORT

OF

West Ohio Gas Co.

Lima, Ohio

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31.

1929

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1ST

INSTRUCTIONS

This form of annual report must be filled out and returned to the office of THE PUBLIC UTILITIES COMMISSION OF OHIO, Columbus, Ohio, by March 1st next.

Heretofore, it has been customary to print on the left hand pages instructions for answering questions covered by the opposite page of the report; but the Commission is of the opinion that this is not necessary, as returns often indicate that instructions have not been read or at least have not been followed, and they are therefore omitted from this form. The respondent, however, is urged to ask for instructions should there be any item in the report that is not fully understood and upon such request any information asked for will be furnished promptly.

This report form calls for Artificial Gas, Natural Gas and Electric Light operations, and any company furnishing more than one of these classes of service will report such information as is applicable for each class.

If it is necessary or desirable to insert additional statements, typewritten or other, in this report, care should be taken that they be legibly made on paper of a durable sort and, as a rule of a size not exceeding that of a page. Inserted sheets should be securely attached, preferably at inner margin.

All entries should be made in a permanent black ink, except those of a contrary or unusual character (like deficits for example), which should be made in a permanent red ink.

Each respondent should make its annual report to this Commission in duplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason two copies of the accompanying form are sent to each company concerned.

The word "respondent," whenever used in this report, means the company in whose behalf the report is made.

Attention is called to the following sections of the General Code of Ohio:

Section 614-2. Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation wherever organized or incorporated:

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating, or power purposes to consumers within this state, is a natural gas company;

Section 614-48. Every public utility shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the Commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the Commission. The Commission may at any time, require specific answers to questions upon which it may desire information.

Section 614-65. Whoever being an officer, agent or employe in an official capacity, of a public utility or railroad defined in this act, knowingly violates any provisions of this act, or wilfully fails, omits, or neglects to obey, observe or comply with any lawful order or direction of the Commission made with respect to any public utility or railroad shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than two years, or both, and each day's continuance of such failure, omission or neglect shall constitute a separate offense.

THE INFORMATION CALLED FOR BY EACH PAGE OF THIS REPORT, UNLESS OTHERWISE INDICATED, IS TO BE REPORTED FOR THE ENTIRE COMPANY AND NOT FOR THE STATE OF OHIO ONLY

DO NOT FAIL TO MAKE RETURNS OF INTRASTATE GROSS EARNINGS ON PAGE 50

ANNUAL REPORT

OF

West Ohio Gas. Co

Lima, Ohio

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31,
1929

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

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HISTORY

1. Exact name of company making this report. West Ohio Gas Co.

2. Date of organization. Oct. 24-1924

3. Under the laws of what Government, State or Territory organized? If more than one name all. Give reference to each statute and amendments thereof. State of Ohio.

4. If a consolidated or merger company name all constituent and all merged companies. Give reference to charters or general laws governing each, and all amendments of same. Property of the following companies purchased by respondent in Dec. 1924.

The Lima Natural Gas Co.
The Wapakoneta Gas Co.
The Celina Gas Co.
The Lima Gas Light Co.
The St Marys Gas Co.

5. Date and authority for each consolidation and each merger.

On authority of order 3329-3330 issued by the Public Utilities Commission of Ohio. Nov. 26-1924

6. State whether respondent is a corporation, a joint stock association, a firm or partnership, or an individual.

Corporation

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized and the occasion for its reorganization.

8. State whether or not, the respondent during the year conducted any part of its business under a name, or names, other than the above, in response to inquiry No. 1, above. If so, give full particulars.

No

9. Where is the plant or plants located? Lima, Cridersville, Wapakoneta, St Marys, Celina and Kenton O.

10. Name below all classes of public service furnished by the respondent: Production and distributing of Gas for domestic, Commercial, industrial use in the above mentioned districts

DIRECTORS.

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NAME.	POST-OFFICE ADDRESS.	DATE OF EXPIRATION OF TERM.
Samuel Insull.	122 S. Mich. Ave. Chicago Ill.	1 year from Mar. 12-1929 or until successor is elected.
Samuel Insull Jr.	" " " " "	
Emmett R. Curtin	Lima O.	
E. R. Curtin Jr.	" "	
J. L. Pringle	" "	
H. O. Bently	" "	
S. E. Mulholland	Ft. Wayne Ind.	

PRINCIPAL OFFICERS.

TITLE	NAME	OFFICIAL ADDRESS.
Chairman of the Board,	Samuel Insull.	Chicago Ill.
President,	Emmett R. Curtin	Lima O.
First Vice-President,	Samuel Insull	Chicago Ill.
Second Vice-President,		
Third Vice-President,		
Secretary,	B. A. Sheeran	Chicago Ill.
Treasurer,	G. T. Mitchell	" "
General Solicitor,		
Attorney, or General Counsel,	H. O. Bently	Lima O.
Comptroller,	W. A. Sauer	Chicago Ill.
Assistant Comptroller,		
General Auditor,		
Assistant General Auditor,		
General Manager,	Emmett R. Curtin	Lima O.
Chief Engineer,		
Superintendent,		
Managing Agent for the Company in Ohio,		

Location of principal office, at Lima County of Allen
and State of Ohio.

Officer to whom correspondence concerning this report should be addressed:

NAME.	TITLE.	ADDRESS.
Emmett R. Curtin	President	112 W. Market St. Lima O.

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4 FACTS PERTAINING TO CONTROL OF RESPONDENT.

1. Date of last meeting of stockholders for election of directors. March 12-1929
2. Date of last closing of stock books before end of year for which this report is made. Books do not close.
3. Total number of stockholders of record at the date required in answer to Question 2.
4. Has each share of stock one vote? Each share of common stock has one vote.
If otherwise, explain voting rights.

5. Has any issue of securities contingent voting rights? Yes.
If so, explain character of such rights. Preferred stock is entitled to vote in event of default in four quarterly dividends.
6. Has any issue of securities special privileges in the election of directors?
If so, explain character of such privileges. Holders of common stock elect directors.
7. Did any individual, association, corporation or corporations, control the respondent at close of year?
Yes.

If control was so held, state:

(a) The form of control, whether sole or joint;
Sole.

(b) The name of the controlling corporation or corporations;
Midland Utilities Company.

(c) The manner in which control was established;
Stock control.

(d) The extent of control; Own all common stock except directors qualifying shares.

(e) Whether control was direct or indirect;
Direct

(f) The name of the intermediary through which control, if indirect, was established.

8. Did any individual, association, or corporation, as trustee, control the respondent at close of year?
If control was so held, state:
No.

(a) The name of the trustee;

(b) The name of the beneficiary or beneficiaries for whom the trust was maintained.

NAME.	CONTROL.					
	SOLE OR JOINT.	HOW ESTABLISHED.	EXTENT.	DIRECT OR INDIRECT	IF INDIRECT, NAME OF INTERMEDIARY THROUGH WHICH CONTROL IS ESTABLISHED.	OTHER PARTIES TO AGREEMENT FOR JOINT CONTROL.
ACTIVE CORPORATIONS:		None.				
INACTIVE CORPORATIONS:		None				

Give a list showing every agreement, arrangement, or understanding in force at any time during the year, through which agreement, arrangement, or understanding the respondent became obligated or privileged to receive from, or supply to, other corporations or persons, gas, electric energy or property, or to receive or render any service of any class which respondent is obligable or privileged to receive or render, the terms of which agreement differ in any regard whatever from those upon which any person is of common right entitled or bound to supply to, or to receive from, the respondent, gas, electric energy or property, or any service of any kind which respondent is obligable to receive or render. Show for each agreement: (1) the names and addresses of the parties thereto, (2) the date when it became effective, (3) the date when according to its terms it will expire, (4) the consideration upon which it is based, and (5) the amount of business done under it during the year. If there was no such agreement, state that fact.

SHOW ARTIFICIAL GAS CUSTOMERS ON THIS PAGE. 7

The respondent will show on this page the names of cities or villages in which it supplies artifical gas, with number of customers in each.
If any public utility product other than that designated by pages 6, 7 and 8, is supplied, name such product on this page, giving names of cities or villages supplied, with number of customers in each.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN	NUMBER OF CUSTOMERS.
Lima	10,139	BROUGHT FORWARD.	
FORWARD.		TOTAL.	

691

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WEST OHIO GAS COMPANY

112 West Market Street

Lima, Ohio.

September 17, 1930.

Mr. Ira E. Sprankle
Superintendent of Investigation
Public Utilities Commission of Ohio
Columbus, Ohio.

Dear Mr. Sprankle:

In reply to your letter under date of September 15th, addressed to Mr. Curtin, relative to serving customers in Cridersville, we wish to advise that in our report to your Commission for the year 1929 the customers served in Cridersville, were included in the number reported for Lima in error.

The report should read 10,017 customers in Lima supplied with artificial and 122 in Cridersville supplied with natural gas.

We regret that this error was made and want to thank you for calling our attention to same.

Yours very truly,

WEST OHIO GAS COMPANY

F. L. Pringle
Ass't. Treas.

FLP:AL

8 SHOW NATURAL GAS CUSTOMERS ON THIS PAGE.

The respondent will show on this page the names of cities or villages in which it supplies natural gas, with number of customers in each.
If consumers are supplied outside of cities and villages in rural territory, give name of township with number of customers.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN.	NUMBER OF CUSTOMERS.
		BROUGHT FORWARD.	
		Wapakoneta	1,442
		St Marys.	1,353
		Celina	1,043
		Kenton	1,930
FORWARD.		TOTAL.	5,768

10 GENERAL BALANCE SHEET

ASSET ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. FIXED CAPITAL ACCOUNTS:		
Fixed Capital—Pages 13, 16, 18	3 602 544 20	
Cost of Fixed Capital purchased		
Construction work in progress		
II. INVESTMENT ACCOUNTS:		
Investment Securities—Page 19.	50 00	
Property Used in Other Public Services—Page 19.		
Advances to Affiliated Companies for Construction, Equipment, or Additions and Betterments—Page 19.		
Other Investments—Page 19.		
III. REACQUIRED SECURITIES ACCOUNTS:		
Reacquired Capital Stock	27 000 00	
Reacquired Bonds		
IV. FUND ACCOUNTS:		
Sinking Fund Assets—Page 20		
Depreciation Fund Assets—Page 20		
Insurance and Other Reserve Fund Assets—Page 20		
V. SPECIAL DEPOSIT ACCOUNTS:		
Interest Special Deposits—Page 21		
Dividend Special Deposits—Page 21		
Other Special Deposits—Page 21	300 00	
VI. CURRENT ASSET ACCOUNTS:		
Cash	14 521 76	
Notes Receivable—Page 21	575 00	
Accounts Receivable from Consumers	41 163 30	
Accounts Receivable from Affiliated Companies—Page 21	373 25	
Other Accounts Receivable	32 446 38	
Matured Interest and Rents Receivable		
Materials and Supplies	41 310 81	
Subscriptions to Capital Stock	25 000 00	
Other Current Assets		
VII. ACCRUED ASSET ACCOUNT:		
Unmatured Interest and Rents Receivable		
VIII. PREPAID ACCOUNTS:		
Prepaid Insurance	1 309 68	
Prepaid Interest		
Prepaid Taxes		
Other Prepaid Accounts		
IX. DEFERRED CHARGE ACCOUNTS:		
Discount on Capital Stock	90 626 25	
Unamortized Debt Discount and Expense	97 526 40	
Property Abandonment—Page 22		
Extraordinary Casualties		
Non-Productive Well Drilling Expense		
Preliminary Survey and Investigation Charges		
Other Deferred Charges	41 277 68	
Grand Total	4 004 327 31	

GENERAL BALANCE SHEET

LIABILITY ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. CORPORATE CAPITAL LIABILITY ACCOUNTS:		
Capital Stock—Page 23	2 976 981 30	
Installments Paid on Capital Stock Subscriptions		
Stock Liability for Conversion of Securities		
Premium on Capital Stock		
II. NON-CORPORATE PROPRIETORSHIP ACCOUNTS:		
Sole Proprietorship		
Partnership		
III. FUNDED DEBT ACCOUNTS—Page 23		
Bonds	1 000 000 00	
Real Estate Mortgages		
Advances from Affiliated Companies for Construction		
Equipment, or Additions and Betterments		
Other Funded Debt		
IV. CURRENT LIABILITY ACCOUNTS:		
Receiver's Certificates		
Judgments		
Workmen's Compensation		
Notes Payable—Page 25	160 000 00	
Consumer's Deposits	43 644 73	
Accounts Payable to Affiliated Companies—Page 25	4 252 28	
Other Accounts Payable	37 615 73	
Matured Funded Debt—Page 25		
Matured Interest on Funded Debt		
Matured Interest on Unfunded Debt		
Dividends Payable		
Service Billed in Advance		
Capital Stock Subscribed		
Other Current Liabilities	703 03	
Purchase contracts	16 000 00	
V. ACCRUED LIABILITY ACCOUNTS:		
Unmatured Interest Accrued on Funded Debt	6 000 00	
Unmatured Interest Accrued on Unfunded Debt	187 50	
Taxes Accrued	68 304 45	
Other Accrued Liabilities		
VI. DEFERRED CREDIT ACCOUNTS:		
Unamortized Premium on Debt		
Other Deferred Credits		
Public improvement assessments	2 496 16	
VII. RESERVE ACCOUNTS:		
Insurance Reserve—Page 26		
Injuries and Damages Reserve—Page 26	2 301 61	
Uncollectible Consumers' Accounts Reserve—Page 26	4 449 12	
Depreciation of Structures and Equipment Reserve—Page 25	186 798 72	
Amortization of ~~Other Capital Reserve~~—Page 26 Transmission line	68 103 54	
Other Reserves—Page 26		
Street main contribution	200 00	
VIII. APPROPRIATED SURPLUS ACCOUNTS:		
Surplus Invested in Fixed Capital		
Funded Debt Retired through Surplus		
Surplus Reserved for Sinking Funds		
Other Surplus Reserves		
IX. UNAPPROPRIATED SURPLUS ACCOUNT:		
Corporate Surplus Unappropriated*	52 187 14	
Grand Total	4 024 327 31	

*Insert "Debit" or "Credit" as may be appropriate, showing the amount of debit in red.

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

ACCOUNT.	Balance at beginning of year	Charges for Capital added during year.	Credits made to sub-account during year.	Balance at close of year.
INTANGIBLE FIXED CAPITAL:				
1. Organization				
2. Franchises				
3. Miscellaneous intangible capital				
TANGIBLE FIXED CAPITAL:				
4. Land:				
(a) Land occupied by gas works	4 834 37			4 834 37
(b) Land occupied by outside holder stations				
(c) Rights of way				
(d) Water rights				
(e) General office land				
(f) Miscellaneous land devoted to gas operations				
5. Structures:				
(a) Works and station structures	38 282 56			38 282 56
(b) Holders				
(c) General office structures				
(d) Miscellaneous structures devoted to gas operations	22 330 21			22 330 21
6. Boiler plant equipment	1 743 80			1 743 80
7. Steam engines				
8. Internal combustion engines				
9. Accessory power equipment				
10. Benches and retorts				
11. Water gas sets	5 958 00			5 958 00
12. Purification apparatus				
13. Accessory works equipment	2 887 42			2 887 42
14. Mains				
15. Services				
16. Consumers' meters				
17. Consumers' Meter installation				
18. Street lighting equipment				
19. Gas appliances				
	76 036 36			76 036 36

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS — (Continued)

ACCOUNT	Balance at beginning of year.	Charges for capital added during year.	Credits made to sub-account during year.	Balance at close of year.
20. General equipment:				
(a) General office equipment				
(b) Shop equipment				
(c) Stores equipment				
(d) Transportation equipment				
(e) Telephone, telegraph and wireless system				
(f) Laboratory equipment				
(g) Miscellaneous equipment				
21. Miscellaneous tangible capital				
22. Engineering and superintendence during construction				
23. Law expenditures during construction				
24. Injuries and damages during construction				
25. Taxes during construction				
26. Interest during construction				
27. Miscellaneous construction expenditures				
28. Fixed capital not classified by prescribed accounts				
29. Cost of plant and equipment purchased				
30. Unfinished Plant Investment (construction work in progress)				
Total	76,036,36			76,036,36

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FIXED CAPITAL INSTALLED PRIOR TO JANUARY 1, 1931

Give particulars of the credits made during the year in the accounts of the respondent representing its plant and equipment installed in service prior to January 1, 1921.

If the respondent's classification of fixed capital accounts in conformity with the principles embodied in the account for Fixed Capital Installed since December 31, 1930, became effective at an earlier date, the dates in the headings of the present schedule and the following schedule may be correspondingly modified.

Names of subaccounts shown in column (a) should be those carried on the respondent's books of account immediately prior to the adoption of the Uniform System of Accounts for Natural Gas Companies or its equivalent.

If the respondent's accounts representing plant and equipment installed prior to January 1, 1921, have been reclassified in accordance with the rules governing accounts for fixed capital installed since December 31, 1930, there may be shown in column (a) the names of accounts now carried on respondent's books representing such plant and equipment instead of those carried prior to the adoption of the Uniform System of Accounts for Natural Gas Companies.

In connection with the credits called for in column (c) of this schedule and column (d) of schedule on page 15, see paragraph 2, page 18, of the Uniform System of Accounts for Natural Gas Companies.

NAMES OF ACCOUNTS KEPT PRIOR TO JANUARY 1, 1931. (a)	Balance at beginning of year. (b)	Credits made to sub-accounts during year. (c)	Balance at close of year. (d)
Plant and property purchased	3 108 268 28	2 242 89	3 106 025 39
Total	3 108 268 28	2 242 89	3 106 025 39

FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1930—NATURAL GAS

ACCOUNT. (a)	Balance at beginning of year. (b)	Charges for capital added during year. (c)	Credits made to sub-account during year. (d)	Balance at close of year. (e)
I. UNDISTRIBUTED FIXED CAPITAL ACCOUNTS:				
200 Organization	28 812 73			28 812 73
201 Franchises				
202 Patent Rights and Licenses				
203 Other Undistributed Fixed Capital				
II. PRODUCTION SYSTEM PROPERTY ACCOUNTS:				
204 Land				
205 Leaseholds				
206 Rights of Way				
207 Natural Gas Rights				
208 Gas Well Structures				
209 Field Measuring Station Structures				
210 Other Production System Structures				
211 Gas Well Construction				
212 Gas Well Equipment				
213 Field Line Construction				
214 Field Line Equipment				
215 Field Measuring Station Equipment				
216 Drilling and Cleaning Equipment				
217 Other Production System Equipment				
III. TRANSMISSION SYSTEM PROPERTY ACCOUNTS:				
218 Land	515 26			515 26
219 Leaseholds				
220 Rights of Way				
221 Compressing Station Structures				
222 Transmission System Measuring Station Structures				
223 Other Transmission System Structures				
224 Compressing Station Equipment				
225 Transmission System Measuring Station Equipment				
226 Transmission Line Equipment				
227 Other Transmission System Equipment				
IV. DISTRIBUTION SYSTEM PROPERTY ACCOUNTS:				
228 Land				
229 Leaseholds				
230 Rights of Way	127 66			127 66
231 District Regulator Structures				
232 Other Distribution System Structures				
233 Gas Receivers and District Regulators	2 415 12			2 415 12
234 Distribution Line Equipment	160 822 72	2 612 61		163 435 33
235 Service Line Equipment	36 533 72	2 416 46		38 950 18
236 Meters	16 327 59	4 862 05		21 189 64
237 Meter Installation	6 008 72	1 417 29		7 426 01
238 House Regulators				
239 Other Distribution System Equipment				

FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1920—NATURAL GAS

ACCOUNT. (a)	Balance at beginning of year. (b)	Charges for capital added during year. (c)	Credits made to sub-accounts during year. (d)	Balance at close of year. (e)
V. UTILIZATION SYSTEM PROPERTY ACCOUNTS:				
240 Commercial Lighting System				
241 Municipal Street Lighting System				
242 Private Street Lighting System				
243 Other Utilization Equipment				
VI. GENERAL PROPERTY ACCOUNTS:				
244 General Office Land	60 000 00			60 000 00
245 Other General Land				
246 Leaseholds				
247 General Office Structures	439 61			439 61
248 Other General Structures				
249 General Office Equipment	1 471 67			1 471 67
250 General Store Equipment				
251 General Shop Equipment	1 134 65	298 96		1 433 61
252 General Stable Equipment				
253 General Garage Equipment	12 822 72	2 197 27	1 979 50	12 970 49
254 General Laboratory Equipment				
255 General Telephone and Telegraph System				
256 General Tools and Implements				
257 Other General Equipment	1 076 07	229 63		1 305 70
VII. UNDISTRIBUTED CONSTRUCTION EXPENDITURE ACCOUNTS:				
258 Engineering and Superintendence during construction				
259 General Officers' and Clerks' salaries during construction				
260 General Officers' and Clerks' expenses during construction				
261 Office Supplies and Expenses during construction				
262 Law Expenditures during construction				
263 Injuries and Damages during construction				
264 Insurance during construction				
265 Taxes during construction	950 02			950 02
266 Interest during construction				
267 Other Expenditures during construction	71 00			71 00
Condemnation in progress	7 788 36	13 060 00		20 848 36
Total	335 218 68	87 243 27	1 979 50	420 482 45
SUMMARY OF FIXED CAPITAL:				
Installed Prior to January 1, 1921 Dec. 1 1924	3 108 267 28		2 282 89	3 106 025 39
Installed Since December 31, 1920 Dec. 1-1924	335 218 68	87 243 27	1 979 50	420 482 45
Total	3 443 486 96	87 243 27	4 222 39	3 526 507 84

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INVESTMENT SECURITIES

INVESTMENT SECURITIES

NAME OF ISSUING COMPANY AND DESCRIPTION OF SECURITY HELD.	PLEDGED.		UNPLEDGED.		INCOME DERIVED			Extent of control, if control exists.
	Par value.	Book value.	Par value.	Book value.	Rate.	Amount of dividends.	Amount of interest.	
Investment of Affiliated Companies:								
		None						
Investment of Non-Affiliated Companies:								
		None						
Other Investments:								
One share no par stock in the Lima gasoline Co.		50 00				11 00		
Total		50 00				11 00		

FUND ACCOUNTS

NAME OF FUND.	Par value.	Book value.	Balance in Fund at beginning of year.	Additions to Fund During Year.	Withdrawals from Fund During Year.	Balance in Fund at close of year.
Sinking Fund Assets.						
Depreciation Fund Assets:						
Insurance and Other Reserve Fund Assets:						
Total						

CASH AND SPECIAL DEPOSITS

Name of depositary.	Purpose of Deposit	Amount at close of year			
The Lima Trust Co. Lima O.	Operations		11	468	90
Peoples Nat'l Bank Wapakoneta O	"			595	04
Amer. State Bank St. Marys. O.	"			549	38
The Commercial Bank Co. Celina O.	"			550	17
The Commercial Bank. Kenton O.	"			588	27
Petty Cash Funds.	"			720	00
Pay Roll Fund. Lima Trust Co. Lima O	"			200	00
Halsey-Stuart Co. Chicago Ill.	To cover 2% nominal tax on bond holders interest			600	00
	Total		15	321	76

NOTES AND ACCOUNTS RECEIVABLE

Bills Receivable. Name of debtor	Amount at close of year				*Miscellaneous Accounts Receivable. Name of debtor	Amount at close of year			
Harry Hildreth			200	00	Acct. receivable gas consumers.		48	963	30
Joseph Askins.			375	00	Acct. receivable mercantile.		31	111	62
					" " laundry		1	334	76
Total,			575	00	Total,		81	409	68

ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES

Name of debtor.	Character of transaction	Amount at close of year			
Delphos Gas Co.	Materials transferred			373	25
	Total			373	25

*Show principal items only. Minor items may be reported in one group.

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PROPERTY ABANDONED

Items.	Year of Abandonment	Balance in Account at beginning of year	Amount Charged to Account during year	Amount Credited to Account during year	Balance in Account at close of year
		None			
Total.					

REMARKS

CAPITAL STOCK.

CLASS OF STOCK.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. Rate	AMOUNT.
Common	75 000	Par		75 000 00					62 500 00
Preferred Class "A"	3 000	100	300 000 00	300 000 00			300 000 00	7	21 000 00
" " "B"	4 500	100	450 000 00	450 000 00			450 000 00	7	31 500 00
TOTAL	82 500								195 000 00

FUNDED DEBT.

DESIGNATION OF ISSUE OR OBLIGATION.	TERM. Date of Issue	TERM. Date Maturity	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY	IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION	INTEREST. Rate	When Payable	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
First and Refunding 6% Mortgage Bonds	7/1/02	7/1/54	1 000 000	1 000 000	None		1 000 000	6	Semi-Annual	60 000	60 000
TOTAL			1 000 000	1 000 000			000 000			60 000	60 000

*Purpose for which issue was authorized:

Receipts Outstanding at the close of the year for installments received on subscriptions for stocks were as follows:

Common stock, $; Second preferred stock, $; First preferred stock, $; Debenture stock, $; All classes, $

924

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SECURITY FOR FUNDED DEBT.

DESIGNATION OF BOND OR OBLIGATION	PROPERTY MORTGAGED AND SECURITIES PLEDGED. DESCRIPTION.	VALUE.	REMARKS.
First and refunding mortgage bonds	Entire property.	3,519,523.32	

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SUNDRY CURRENT LIABILITIES

NAME OF CREDITOR OR OBLIGATION.	CHARACTER OF TRANSACTIONS INVOLVED.	Credit balance at close of year.		
	Notes Payable			
Midland Utilities Co.	Advances for construction	160	000	00
	Total,	160	000	00
	Accounts Payable to Affiliated Companies			
Northern Indiana Public Service Co.	Materials transferred		805	64
Insurance trustees. I	Insurance Premiums		684	21
Midland Rock transfer Co.	Services rendered			34
Midland Utilities Co. of Ind.	Supplies furnished		108	32
Midland United Co.	Services rendered	1	693	41
Midland Utilities Co.	Interest		160	36
	Total,	4	252	28
	Matured Funded Debt			
	Total,			

DEPRECIATION OF STRUCTURES AND EQUIPMENT RESERVE

DEBIT ITEMS.				CREDIT ITEMS.			
Retirements During the Year	8	035	09	Balance at Beginning of Year	136	224	50
Other Debits:		132	01	Amount Reserved During the Year by Charges to Operating Expenses	58	741	32
				Other Credits:			
Balance at Close of Year	186	798	72				
Total,	194	965	82	Total,	194	965	82

BASIS FOR DEPRECIATION RESERVE.

Explain here in detail the basis upon which the charge to operating expenses on account of depreciation is founded and also the method by which the amount in question was derived. The amount here shown will be the same as that carried to "Depreciation of Structures and Equipment Reserve" on the General Balance Sheet.

Depreciation of general property in accordance with an order of the Public Utilities Commission of Ohio.
Depreciation of automotive equipment based on actual cost less salvage amortized over life of equipment.

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RESERVES

DEBIT ITEMS				CREDIT ITEMS			
INSURANCE RESERVES							
				Balance at Beginning of Year			
				Amount Reserved During the Year by Charges to Operating Expenses			
				Other Credits: None.			
Balance at Close of Year							
Total				Total			
INJURIES AND DAMAGES RESERVE							
				Balance at Beginning of Year	1	510	43
Charges account injuries and damages		227	92	Amount Reserved During the Year by Charges to Operating Expenses	1	000	00
				Other Credits:		19	00
Balance at Close of Year	2	701	61				
Total	2	629	43	Total	2	629	43
UNCOLLECTIBLE CONSUMERS' ACCOUNTS RESERVE							
				Balance at Beginning of Year	4	317	01
Uncollectible Accts charged off	2	677	68				
Adjusting 1921 reserve	1	439	55	Amount Reserved During the Year by Charges to Operating Expenses	4	449	22
				Other Credits:			
Balance at Close of Year	4	449	22				
Total	8	766	23	Total	8	766	23
AMORTIZATION OF ~~OTHER CAPITAL RESERVE~~ Franchise Cr.							
				Balance at Beginning of Year	62	995	84
Balance at close of year	66	193	84	Amount Reserved During the Year by Charges to Operating Expenses	11	705	00
				Other Credits:			
Balance at Close of Year							
Total	66	193	84	Total	66	193	84
OTHER RESERVES							
				Balance at Beginning of Year			
				Amount Reserved During the Year by Charges to Operating Expenses			
				Other Credits:			
Balance at Close of Year							
Total				Total			

MEMORANDUM

Use this page for an explanation of any item contained in this report where sufficient space is not available.

CORPORATE SURPLUS UNAPPROPRIATED

ITEM	DEBITS				CREDITS				REMARKS
CREDITS:									
Credit balance at beginning of year	**	**	**	*		47	655	26	
Credit balance transferred from Income Account	**	**	**	*		4	484	75	
Uncollectible Consumers' Accounts recovered	**	**	**	*					
Uncollectible Non-Operating Revenues recovered	**	**	**	*					
Other Additions to Surplus	**	**	**	*					
Miscellaneous Credits	**	**	**	*		2	254	36	
DEBITS:									
Debit balance at beginning of year					**	**	**	*	
Debit balance transferred from Income Account					**	**	**	*	
Surplus Appropriated for Sinking Funds					**	**	**	*	
Surplus Appropriated for Other Reserve Funds					**	**	**	*	
Surplus Appropriated for Dividends—Page 28					**	**	**	*	
Surplus Appropriated for Investment in Fixed Capital					**	**	**	*	
Gifts to Affiliated Companies					**	**	**	*	
Expenses unprovided for elsewhere					**	**	**	*	
Amortization unprovided for elsewhere					**	**	**	*	
Other Appropriations of Surplus					**	**	**	*	
Other Deductions from Surplus					**	**	**	*	
Uncollectible Consumers' Accounts—Old Year					**	**	**	*	
Uncollectible Non-Operating Revenues—Old Year					**	**	**	*	
Miscellaneous Debits		1	50	53	**	**	**	*	
Balance carried forward to Balance Sheet		52	887	84					
Total		54	394	37		54	394	37	

DIVIDENDS DECLARED DURING THE YEAR.

NAME OF SECURITY ON WHICH DIVIDEND WAS DECLARED	Rate Per Cent. Regular.	Rate Per Cent. Extra.	Par value of amount on which dividend was declared.	*Amount of dividend.	Date. Declared.	Date. Payable.
Dividends Charged to Income:						
Class "A" preferred first quarter	1 3/4		300 000 00	5 250 00	1/30/29	3/1/29
" " " second "	"		300 000 00	5 250 00	3/22/29	6/1/29
" " " third "	"		300 000 00	5 250 00	7/19/29	9/2/29
" " " fourth "	"		300 000 00	5 250 00	10/29/29	12/2/29
" "B" " "	"		450 000 00	7 875 00	1/30/29	3/1/29
" " " "	"		450 000 00	7 875 00	3/22/29	6/1/29
" " " "	"		450 000 00	7 875 00	7/19/29	9/2/29
" " " "	"		450 000 00	7 875 00	10/29/29	12/2/29
Common stock 10¢ per share.				7 500 00	[illegible]	5/1/29
" " 20¢ " "				15 000 00	[illegible]	[illegible]
" " 20¢ " "				15 000 00	[illegible]	11/6/29
" " 20¢ " "				15 000 00	12/20/29	12/28/29
Total Charged to Income				105 000 00		
Dividends Charged to Surplus:						
Total Charged to Surplus:				105 000 00		
Grand Total						

*Total of this column should correspond with like item on page 23.

INCOME ACCOUNT
(Entire Company)

ACCOUNT	AMOUNT	REMARKS
I. OPERATING INCOME:		
1. Operating Revenues—Page 30	744 241 55	
2. Operating Expenses—Pages 32-36-40	608 540 08	
3. *Net Operating Revenue	135 701 47	
II. NON-OPERATING REVENUES AND EXPENSES		
4. Revenues—Page 41	46 953 13	
5. Expenses—Page 41	42 832 46	
6. *Net Non-Operating Revenue	4 120 67	
7. *Total Net Operating Income (Total Items 3 & 6)	139 822 14	
8. Taxes Assignable to Operations—Page 43	58 656 36	
9. *Gross Income (Item 7 less Item 8)	181 265 78	
III. GROSS INCOME DEDUCTIONS.		
10. Rent for Lease of Public Utility Properties—Page 44		
11. Joint Facility Rent		
12. Other Rent Deductions		
13. Interest Accrued on Funded Debt—Page 23	60 000 00	
14. Interest Accrued on Unfunded Debt	9 877 95	
15. Guaranties of Periodic Payments		
16. Loss on Operations of Others		
17. Other Contractual Deductions from Income		
18. Amortization of Debt Discount and Expense	2 913 69	
19. Amortization of Interests in Landed Capital		
20. Other Deductions from Income	606 67	
21. Amortization of Premium on Debt		
Interest on Advances (Cr)	1 365 62	
22. Total Deductions from Gross Income	73 042 78	
23. *Net Income (Item 9 less Item 22)	108 223 00	
IV. NET INCOME APPROPRIATIONS		
24. Net Income Appropriated for Sinking Funds—Page 45		
25. Net Income Appropriated for Depreciation Reserve Fund—Page 45		
26. Net Income Appropriated for Other Reserve Funds—Page 45		
27. Net Income Appropriated for Dividends—Page 28	103 738 25	
28. Net Income Appropriated for Investment in Fixed Capital—Page 45		
29. Total Appropriations of Income	103 738 25	
30. *Balance transferred to surplus—Page 28 (Item 23 less Item 29)	4 484 75	

31. The operating revenues and expenses above stated relate to the period beginning Jan. 1 1929 and ending Dec. 31 1929

*If deficit, in Red.

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30 ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—OPERATING REVENUES

ACCOUNT.	CLASS.			AMOUNT.			REMARKS.
ARTIFICIAL GAS REVENUES:							
1. Metered Domestic and Commercial Sales	A	B	C	480	433	45	
2. Metered Industrial Sales	A	B	C	22	676	36	
3. Metered Sales for Municipal Street Lighting	A	B	C				
4. Metered Sales for Other Municipal Purposes	A	B	C	2	216	44	
5. Metered Sales to Other Gas Utilities	A	B	C				
6. Flat-Rate Sales to General Consumers	A	B	C				
7. Flat-Rate Sales for Municipal Street Lighting	A	B	C				
8. Flat-Rate Sales for Other Municipal Purposes	A	B	C				
9. Prepaid Gas Sales	A	B	C				
10. Commissions on Others' Gas	A	B	C				
11. Consumers' Discounts Forfeited and Penalties Imposed	A	B	C	6	527	29	
Total Artificial Gas Revenues				511	853	64	
NATURAL GAS REVENUES:							
1. Metered Private Sales			C				
2. Metered Domestic and Commercial Sales	A	B		325	410	98	
3. Metered Industrial Sales	A	B		5	953	01	
4. Other Metered Private Sales	A	B					
5. Metered Sales of Other Natural Gas Utilities			C				
6. Metered Sales to Affiliated Natural Gas Utilities	A	B					
7. Metered Sales to Non-affiliated Natural Gas Utilities	A	B					
8. Metered Public Sales	A	B	C		671	76	
9. ~~Unmetered Private Sales~~			C		252	21	
10. Unmetered Domestic and Commercial Sales	A	B					
11. Unmetered Industrial Sales	A	B					
12. Unmetered Sales for Lighting Private Streets	A	B					
13. Other Unmetered Private Sales	A	B					
14. Unmetered Sales to Other Natural Gas Utilities			C				
15. Unmetered Sales to Affiliated Natural Gas Utilities	A	B					
16. Unmetered Sales to Non-affiliated Natural Gas Utilities	A	B					
17. Unmetered Public Sales			C				
18. Unmetered Sales for Municipal Street Lighting	A	B					
19. Unmetered Sales for Other Municipal Uses	A	B					
20. Consumers' Discounts Forfeited and Penalties Imposed	A	B	C				
21. Allowances to Consumers	A	B	C				
Total Natural Gas Revenues				332	387	91	
ELECTRIC REVENUES:							
1. Municipal Light and Power Revenues			C				
2. Municipal Street Lighting—Arc	A	B					
3. Municipal Street Lighting—Incandescent	A	B					
4. Other Municipal Light and Power Revenues—Metered	A	B					
5. Other Municipal Light and Power Revenues—Flat-Rate	A	B					
6. Private Light and Power Revenues			C				
7. Residence Light and Power Revenues—Metered	A	B					
8. Residence Light and Power Revenues—Flat-Rate	A	B					
9. Commercial Light and Power Revenues—Metered	A	B					
10. Commercial Light and Power Revenues—Flat-Rate	A	B					
11. Miscellaneous Electric Revenues			C				
12. Sales to Other Public Utilities	A	B					
13. Other Miscellaneous Electric Revenues	A	B					
Total Electric Revenues							
Grand Total Operating Revenues				843	241	55	

OPERATING EXPENSES — ARTIFICIAL GAS
(Entire Company)

ACCOUNT.	AMOUNT.		
I. PRODUCTION EXPENSES:			
1. Works Superintendence,	2	089	15
2. Works Labor,	2	063	65
3. ~~Boiler Fuel.~~ Holder stock adjustment		55	14
4. ~~Water.~~ Duplicate production charges (cr)		723	46
5. ~~Fuel Under Boilers.~~ Stock expense apportioned	12	774	69
6. ~~Coal Carbonized.~~ Generator Labor	3	169	41
7. ~~Coal Gas Enrichers.~~ Purification labor		11	00
8. Generator Fuel,	30	728	90
9. Water-Gas Oil,			
10. Purifying Supplies,			
11. Miscellaneous Works Expense,	1	608	43
12. Gas Storage,	1	320	97
13. Gas from Other Sources,			
14. Works and Station Structures — Maintenance,		612	78
15. Power-Plant Equipment — Maintenance,		508	49
16. Gas Apparatus — Maintenance,	3	903	81
17. Works Tools — Maintenance,		172	17
TOTAL PRODUCTION EXPENSES,	57	071	98
II. TRANSMISSION AND DISTRIBUTION EXPENSES:			
18. Transmission Pumping,	3	334	37
19. Distribution Superintendence,	3	113	67
20. Distribution Supplies and Expenses, and operating labor	2	162	81
21. Gas Meter and Installation Work,	5	234	52
22. Work on Consumers' Premises,	7	521	54
23. Gas Mains and Services — Maintenance,	10	726	04
24. Gas Meters — Maintenance,	7	363	48
25. Distribution Tools — Maintenance, and Building and shops		241	52
26. Gas Appliances — Maintenance,	2	122	51
TOTAL TRANSMISSION AND DISTRIBUTION EXPENSES,	42	927	46
III. STREET AND PARK LIGHTING EXPENSES			
27. Street Lamp Operation,			
28. Street Lamps — Maintenance,			
TOTAL STREET AND PARK LIGHTING EXPENSES,			
IV. COMMERCIAL EXPENSES:			
29. Commercial Administration, other commercial labor	13	247	87
30. Advertising, Meter reading	4	479	90
31. Other Commercial Expenses, (Supplies + expenses)	4	569	81
TOTAL COMMERCIAL EXPENSES,	22	337	58
IV-A			
Natural Gas purchased	101	358	34

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32 OPERATING EXPENSES—ARTIFICIAL GAS—(Concluded.)
(Entire Company)

ACCOUNT.	AMOUNT.		
V. NEW BUSINESS EXPENSES:			
32. New business salaries		206	43
33. New business supplies and expenses Demonstrations	1	782	47
34. Advertising supplies and expenses	2	360	18
35. Canvassing and soliciting	8	620	99
36. Miscellaneous new business supplies and expenses	1	037	84
Total New Business Expenses	13	810	91
VI. GENERAL AND MISCELLANEOUS EXPENSES:			
37. Salaries and expenses of general officers	10	741	61
38. Salaries and expenses of general office clerks	8	051	35
39. General office supplies and expenses	2	735	67
40. General law expenses		849	80
41. Miscellaneous general expenses	18	699	49
42. Insurance	3	275	22
43. Relief department and pensions			
44. Gas franchise requirements Indirect charge to construction (Cr)	2	662	17
45. Uncollectible Consumers' Accounts	2	753	41
46. Residuals expense Inventory expenses		410	21
47. General amortization			
48. Injuries to persons and property		688	41
49. Stationery and printing		442	69
50. Store expenses Duplicate miscellaneous charges (Cr)	1	740	31
51. Stable expenses			
52. Miscellaneous adjustments—Balance	1	317	66
53. General structures—Maintenance		6	01
Total General and Miscellaneous Expenses	46	470	91
Recapitulation of Operating Expenses:			
I. Production	59	071	93
II. Transmission and Distribution	42	927	46
III. Street and Park Lighting Natural gas purchased	101	358	34
IV. Commercial	22	339	68
V. New Business	13	810	91
VI. General and Miscellaneous	46	470	90
	285	979	12

NATURAL GAS—OPERATING EXPENSES
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.			
	A. PRODUCTION SYSTEM ACCOUNTS:							
	Operating Labor		B	C				
350	Superintendence	A						
351	Gas Well and Field Line Labor	A						
352	Field Measuring Station Labor	A						
353	Other Labor	A						
	Operating Supplies and Expenses		B	C				
354	Superintendence Supplies and Expenses	A						
355	Gas Well and Field Line Supplies and Expenses	A						
356	Field Measuring Station Supplies and Expenses	A						
357	Production System Rent	A						
358	Other Supplies and Expenses	A						
359	Gas Well Royalties	A	B	C				
360	Rental on Unoperated Leases	A	B	C				
	Maintenance of Production System Structures		B	C				
361	Maintenance of Gas Well Structures	A						
362	Maintenance of Other Production System Structures	A						
	Maintenance of Production System Equipment			C				
	Maintenance of Gas Well and Field Line Equipment		B					
363	Maintenance of Gas Well Equipment	A						
364	Maintenance of Field Line Equipment	A						
365	Abandoning Wells and Changing Field Lines	A						
	Maintenance of Other Production System Equipment		B					
366	Maintenance of Field Measuring Station Equipment	A						
367	Maintenance of Drilling and Cleaning Equipment	A						
368	Maintenance of Other Production Equipment	A						
	Total Production Expenses							
	B. NATURAL GAS PRODUCED BY OTHERS:							
369	Natural Gas Purchased for Resale	A	B	C		101	769	31
370	Purchased Gas Expense	A	B	C				
	Total Produced Expense					101	769	31
	C. TRANSMISSION SYSTEM ACCOUNTS:							
	Operating Labor		B	C				
371	Superintendence	A						
372	Compressing Station Labor	A						
373	Measuring Station Labor	A						
374	Transmission Line Labor	A						
375	Other Transmission System Labor	A						
	Operating Supplies and Expenses		B	C				
376	Superintendence Supplies and Expenses	A						
377	Compressing Station Supplies and Expenses	A					11	76
378	Measuring Station Supplies and Expenses	A						
379	Transmission Line Supplies and Expenses	A						
380	Transmission System Rent	A						
381	Other Transmission System Supplies and Expenses	A						
	Maintenance of Transmission System Structures		B	C				
382	Maintenance of Compressing Station Structures	A						
383	Maintenance of Other Transmission System Structures	A						
	Maintenance of Transmission System Equipment			C				
384	Maintenance of Compressing Station Equipment	A	B					
	Maintenance of Transmission Lines		B					
385	Maintenance of Transmission Line Equipment	A						
386	Changing Transmission Lines	A						
	Maintenance of Other Transmission System Equipment		B					
387	Maintenance of Measuring Station Equipment	A						
388	Maintenance of Other Transmission Equipment	A						
	Total Transmission Expenses						11	76

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NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.	
	D. DISTRIBUTION SYSTEM ACCOUNTS:					
	Operating Labor		B	C		
389	Superintendence	A				226
390	Distribution Line Labor	A				453
391	Labor Removing and Resetting Meters and House Regulators	A				121
392	Labor Inspecting and Testing Meters and House Regulators	A				
393	Other Meter Department Labor	A				
394	Other Distribution System Labor	A				
	Operating Supplies and Expenses		B	C		
395	Superintendence Supplies and Expenses	A				
396	Distribution Line Supplies and Expenses	A				
397	Meter Department Supplies and Expenses	A				
398	~~Distribution System Rent~~ Work on customers premises.	A				928
399	Other Distribution System Supplies and Expenses	A				1 439
400	Maintenance of Distribution System Structures	A	B	C		
	Maintenance of Distribution System Equipment			C		
	Maintenance of Distribution System Lines		B			
401	Maintenance of Distribution Line Equipment	A				913
402	Changing Distribution Lines	A				
403	Maintenance of Service Line Equipment	A				349
	Maintenance of Meters and House Regulators		B			
404	Maintenance of Meters	A				1 540
405	Maintenance of House Regulators	A				
	Maintenance of Other Distribution System Equipment		B			
406	Maintenance of Gas Receivers and District Regulators	A				
407	Maintenance of Other Distribution Equipment and gas appliances	A				1 201
	Depreciation distribution charges (Dr.)					415
	Total Distribution Expenses				13	439
	E. UTILIZATION SYSTEM ACCOUNTS:					
	Operating Labor		B	C		
408	Commercial Lighting System Labor	A				
409	Municipal Street Lighting System Labor	A				
410	Private Street Lighting System Labor	A				
411	Consumer's Premises Labor	A				
	Operating Supplies and Expenses		B	C		
412	Commercial Lighting System Supplies and Expenses	A				
413	Municipal Street Lighting System Supplies and Expenses	A				
414	Private Street Lighting System Supplies and Expenses	A				
415	Consumers' Premises Supplies and Expenses	A				
	Maintenance of Utilization System Equipment		B	C		
416	Maintenance of Commercial Lighting System	A				
417	Maintenance of Municipal Street Lighting System	A				
418	Maintenance of Private Street Lighting System	A				
419	Maintenance of Other Utilization Equipment	A				
	Total Utilization Expenses					
	F. COMMERCIAL DEPARTMENT ACCOUNTS:					
420	Operating Labor	A	B	C	6	709
421	Operating Supplies and Expenses	A	B	C	3	907
	Total Commercial Expenses				10	616
	G. NEW BUSINESS DEPARTMENT ACCOUNTS:					
	New Business Salaries and Commissions		B	C		
422	New Business Salaries	A				705
423	~~New Business Commissions~~ Demonstrating	A				291
424	New Business Supplies and Expenses	A	B	C		384
425	~~New Business Piping Labor~~ Advertising	A	B	C		872
426	~~New Business Piping Supplies and Expenses~~ Canvassing & soliciting.	A	B	C	1	321
	Total New Business Expenses				3	472

NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

	ACCOUNT.	CLASS.	AMOUNT.
H.	GENERAL ADMINISTRATIVE ACCOUNTS:		
	General Administrative Salaries	B C	
427	Salaries of General Officers	A	4 941 73
428	Salaries of General Office Clerks	A	3 631 28
	General Administrative Supplies and Expenses	C	
	General Administrative Supplies	B	
429	General Office Stationery and Printing	A	179 17
430	Other General Office Supplies	A	1 348 28
	General Officers' and General Office Clerks' Expenses	B	
431	General Officers' Expenses	A	
432	General Office Clerks' Expenses	A	
	Other General Administrative Expenses	B	
433	General Law Expenses	A	
434	General Office Rent	A	430 20
435	Other General Office Expenses	A	
436	Maintenance of General Office Structures	A	
437	Maintenance of General Office Equipment	A B C	
	Total Administrative Expenses	A B C	10 357 76
	OTHER GENERAL EXPENSE ACCOUNTS:		
	General Labor	C	
438	Store Labor	A B	
	Stable and Garage Labor	B	
439	Stable Labor	A	
440	Garage Labor	A	
	Shop and Laboratory Labor	B	
441	Shop Labor Sanitary expenses	A	184 69
442	Laboratory Labor	A	
443	Telephone and Telegraph System Labor	A B	
	General Supplies and Expenses	C	
444	Store Supplies and Expenses	A B	
	Stable and Garage Supplies and Expenses	B	
445	Stable Supplies and Expenses	A	
446	Garage Supplies and Expenses	A	
	Shop and Laboratory Supplies and Expenses	B	
447	Shop Supplies and Expenses	A	
448	Laboratory Supplies and Expenses	A	
449	Telephone and Telegraph System Supplies and Expenses	A B	
450	Natural Gas Franchise Requirements	A B C	
451	(See Gross Income Deduction Account No. 609A)		
452	Uncollectible Consumers' Accounts	A B C	1 297 56
	Other General Expenses	C	
453	Public Utilities Commission Expense	A B	8 980 50
	Insurance Relief and Pension Expense	B	
454	Injuries and Damages	A	311 58
455	Other Insurance	A	346 19
456	Relief and Pensions	A	400 68
457	Other General Expense	A B	6 430 79
	Amount Carried Forward		18 701 99

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NATURAL GAS—OPERATING EXPENSES—(Concluded)
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.		
	Amount Brought Forward				18	701	
	General Adjustments			C			
458	Inventory Adjustments	A	B			421	
459	Discount on Materials and Supplies Indirect charge to construction (DR)	A	B			824	
460	Utility's Natural Gas Used in Operations Duplicate charge. (CR)	A	B			1 014	
461	Free Municipal Natural Gas Service	A	B				
	Maintenance of General Structures		B	C			
462	Maintenance of General Store Structures	A					
463	Maintenance of General Stable Structures	A					
464	Maintenance of General Garage Structures	A					
465	Maintenance of General Shop Structures	A					
466	Maintenance of General Laboratory Structures	A					
467	Maintenance of other General Structures	A					
	Maintenance of General Equipment		B	C			
468	Maintenance of General Store Equipment	A					
469	Maintenance of General Stable Equipment	A					
470	Maintenance of General Garage Equipment	A					
471	Maintenance of General Shop Equipment	A					
472	Maintenance of General Laboratory Equipment	A					
473	Maintenance of General Telephone and Telegraph System	A					
474	Maintenance of other General Equipment	A					
475	Depreciation	A	B	C	53	639	
476	Extraordinary Depreciation	A	B	C			
477	Amortization of Franchises, Patent Rights and Licenses Pipe Line	A	B	C	11	708	
478	Amortization of Natural Gas Rights and Leases	A	B	C			
479	Joint Operating Expenses Transferred	A	B	C			
	Total Other General Expenses				82	833	
	RECAPITULATION OF OPERATING EXPENSES:						
	A. Production Expenses	A	B	C			
	B. Natural Gas Produced by Others	A	B	C	101	787	
	C. Transmission Expenses	A	B	C		81	
	D. Distribution Expenses	A	B	C	13	457	
	E. Utilization Expenses	A	B	C			
	F. Commercial Expenses	A	B	C	10	618	
	G. New Business Expenses	A	B	C	3	472	
	H. Administrative Expenses	A	B	C	10	361	
	I. Other General Expenses	A	B	C	82	233	
	Grand Total Operating Expenses				222	546	

ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—NON-OPERATING REVENUE AND EXPENSE ACCOUNTS

ACCOUNT.	CLASS.	AMOUNT.	REMARKS.
NON-OPERATING REVENUE ACCOUNTS:			
1. Merchandise Sales	A B C	58 208 58	
2. Jobbing Work Revenue	A B C	4 059 84	
3. Rents from Lease of Public Utility Properties—Page 42	A B C	195 00	
4. Rents from Lease of Other Properties—Page 42	A B C		
5. Joint Facility Rent	A B C		
6. Interest from Investment Securities	A B C		
7. Interest from Other Sources	A B C	442 55	
8. Dividends on Investment Securities	A B C		
9. Sinking Fund Revenues	A B C		
10. Depreciation Fund Revenues	A B C		
11. Insurance and Other Reserve Fund Revenues	A B C		
12. Profit from Operations of Others—Page 42	A B C		
13. Sub-Utility Revenues—Page 42	A B C		
14. Oil Revenue	A B C		
15. Gasoline Revenue	A B C		
16. Other Non-Operating Revenues	A B C	4 047 16	
Total Revenues (Carry to page 29)		66 953 13	
NON-OPERATING EXPENSE ACCOUNTS:			
1. Merchandise Sales Expense	A B C	54 732 90	
2. Jobbing Work Expense	A B C	3 099 56	
3. Lease of Public Utility Properties Expense	A B C		
4. Lease of Other Properties Expense	A B C		
5. Interest Expense	A B C		
6. Dividend Expense	A B C		
7. Expense of Procuring Profits from Operations of Others	A B C		
8. Sub-Utility Expense—Page 42	A B C		
9. Non-Operating Taxes	A B C		
10. Uncollectible Non-Operating Revenues	A B C		
11. Oil Expense	A B C		
12. Gasoline Expense	A B C		
13. Other Non-Operating Expense	A B C		
Total Expenses (Carry to page 29)		62 832 46	

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SUB-UTILITY AND OUTSIDE OPERATIONS

If any Public Utility service is conducted other than that of Artificial Gas, Natural Gas or Electric Light, show Revenues and Expenses of such Sub-Utility hereunder.

CLASS OF OPERATION.	GROSS REVENUE	EXPENSES	NET REVENUE OR DEFICIT
None			
TOTAL.			

RENT REVENUES FROM LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

DESCRIPTION OF PROPERTY		Name of present landholder.	Rent accrued during year.
Name.	Location.		
Property Purchased for office site.	319 W. Market St. Lima, Ohio	Jacob Piper (leased only during first quarter 1929)	195 00
TOTAL.			195 00

PROFITS AND LOSSES FROM OPERATIONS OF OTHERS

Description of Property Operated.	Location of Property.	Name of operator.	Accrued to Respondent.	
			Profit.	Loss.
	None			
		TOTAL.		

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TAXES AND ASSESSMENTS

KIND OF TAX	Taxes assessed or accrued during year.						Taxes paid during year.					
	Ohio.			Entire.			Ohio.			Entire.		
On the Value of Real and Personal Property Used in Operation	33	427	28	33	427	28	18	171	91	18	171	91
On Real Property Not Used in Operation		891	25		891	25		513	60		513	60
On Gross Receipts—Excise Tax	10	704	30	10	704	30	10	704	30	10	704	30
Public Utilities Commission Maintenance		408	45		408	45		408	45		408	45
Domestic Corporation												
Franchise												
Internal Revenue, U. S. Government												
Federal Income and Excess Profits	13	125	08	13	125	08	7	020	99	7	020	99
Federal on Bond Coupon												
Federal Capital Stock												
Miscellaneous (Specify)												
Total	57	556	36	57	556	36	36	819	25	36	819	25

REMARKS

RENT DEDUCTIONS FOR LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

Description of Property. NAME.	Name of lessor or reversioner.	Total rent accrued during year.	Classification of Rent. Guaranteed interest on bonds.	Guaranteed dividends on stocks.	Cash.
	None				
	Total,				

ABSTRACTS OF LEASEHOLD CONTRACTS.

Give brief abstracts of the terms and conditions of the leases under which the respondent holds the properties above named, showing particularly (1) the date of the lease, (2) the chain or title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

None

FRANCHISES ACQUIRED DURING THE YEAR.

Name of Original Grantor.	Date of grant.	Term in years.	Territory covered.	Operations covered.	Date of acquisition by respondent.	Date of authorization.	Actual money cost to respondent.	Amount at which carried in Balance Sheet.
			None					

If the respondent did not acquire any of the above franchises directly from the original grantor thereof, show the chain of title connecting the original grantor and the respondent.

APPROPRIATIONS OF INCOME AND SURPLUS TO SINKING AND DEPRECIATION RESERVE FUNDS

Name and purpose of sinking or depreciation fund.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL.		

APPROPRIATIONS OF INCOME AND SURPLUS FOR INVESTMENT IN FIXED CAPITAL

Name and purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL.		

OTHER RESERVE FUND APPROPRIATIONS OF INCOME AND SURPLUS

Purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL.		

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Here present statements as follows: 1. All Extensions of the Respondent's Business with Other Companies. 2. All Companies from which the Respondent's Business was Withdrawn. 3. All important Purchases of Equipment for new lines. 4. All other important Physical Changes. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Funded Debt issued. 8. All changes in the respondent's holdings of Stocks and Funded Debt. 9. All other important Financial Changes.

None

CONTRACTS, AGREEMENTS, ETC., WITHIN OHIO.

Here give a concise statement of all Contracts, Agreements, etc., with other Companies or persons, concerning the conduct of the business of the respondent, which became effective during the year covered by this report.

None

*1. If any gas purchased from other gas companies during year, state:

Name of Company.	Number Cubic Feet	Price per M.	Amount Paid.
The Ohio Fuel Gas Co.	184,287,886.	55¢	101,358.34

2. Number cubic feet gas produced during year: (a) Ohio, 267,541,000

(b) Entire Company,

3. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and Commercial Sales,	368,729,600.
(b) Sales to factories and industries,	28,035,400
(c) Public sales (municipalities, etc.)	2,236,500
(d) Miscellaneous gas sales, (House Heating)	9,086,000
(e) Sales to other gas companies,	
Used by Company	4,185,300
Total cubic feet distributed	412,272,800

*4. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.
None			

5. Number cubic feet gas brought into Ohio,

None

6. Number cubic feet gas sold outside of Ohio,

None

7. State kind of gas supplied and process of manufacture, Mixed gas (Natural and Water Gas) distributed to customers in Lima. Straight natural gas delivered to customers in Wapakoneta, St Marys, Celina and Kenton.

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

GENERAL INFORMATION—NATURAL GAS COMPANIES

1. Number of gas wells owned: (a) Ohio,

(b) Entire Company, None

2. Number of gas wells leased and names of lessors,

None

3. Number of acres under lease in Ohio at close of year,

None

*4. If any gas purchased from other companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Paid
The Ohio Fuel Gas Co.	185,035,114	55 ¢	101,769.31

5. Number cubic feet gas produced during year: (a) Ohio,

(b) Entire Company, None

6. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and commercial sales,		154,413,900
(b) Sales to factories and industries,		5,721,300
(c) Public sales (municipalities, etc.),		613.200
(d) Miscellaneous gas sales,	(House Heating)	240,300
(e) ~~Sales to other gas companies,~~	Used by Company	184.600
Total cubic feet distributed,		161,472,300

*7. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.
	None		

8. Number cubic feet gas brought into Ohio,

None

9. Number cubic feet gas sold outside of Ohio,

None

10. Number of gallons of gasoline produced during year,

None

11. Number new wells drilled during year:

	Productive	Non-Productive	Total.
(a) Ohio,		None	
(b) Entire Company,			

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page

1. Number of Stations:

2. Capacity of each station in K. W. hours:

(a) A. C.

(b) D. C.

Total capacity

3. Transmission voltage,

4. Distribution voltage,

*5. If any current purchased from other companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount paid.

6. Number of K. W. hours produced during year. (a) Ohio

(b) Entire Company

7. Number of K. W. hours distributed during year in Ohio:

(a) Domestic and commercial sales,

(b) Sales to factories and industries,

(c) Public sales (municipalities, etc.)

(d) Miscellaneous electric sales,

(e) Sales to other electric companies,

Total K. W. hours distributed,

*8 If any current sold to other electric utility companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount Received.

9. Number of meter customers,

10. Number of Flat Rate customers,

11. Is current furnished for light during day time?

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

1000

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STATEMENT OF INTRASTATE GROSS EARNINGS FOR OHIO FOR THE YEAR COVERED BY THIS REPORT

("Intrastate" means from one point in Ohio to another point in Ohio, or wholly within Ohio.)

Attention is called to Section 606 of the General Code of Ohio, which reads as follows:

SEC. 606. For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment appropriated by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.

TO THE PUBLIC UTILITIES COMMISSION OF OHIO:

For the uses and purposes designated in Section 606 of the General Code of Ohio:

We, the undersigned, Emmett R. Curtin, President,

and F. L. Pringle, Asst. Secretary,

of West Ohio Gas Co.
(Full name of respondent.)

on our oath do severally say that the amount of Intrastate Gross Earnings for the State of Ohio, for the year covered by this report, is $ 211,194.00; that the same has been prepared under our direction from the original books, papers, and records of said company; that we have carefully examined the same, and declare the same to be a complete and correct statement in respect to each and every matter which should be included in Intrastate Gross Earnings, during the period for which said return is made, to the best of our knowledge, information and belief.

Emmett R. Curtin
President.

F. L. Pringle
Asst. Secretary.

SUBSCRIBED AND SWORN TO before me this 1st day of March, 19__

Kathryn M. Cook
Notary Public
Allen Co, Ohio

O Notary Seal O Corporate Seal

VERIFICATION.

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

OATH.

(To be made by the officer having control of the accounting of the respondent.)

State of Ohio }
County of Allen } ss.

F. L. Pringle (Insert here the name of the affiant.) makes oath and says that he is Asst Secy & Asst Treasurer (Insert here the official title of the affiant.)

of West Ohio Gas Co. (Insert here the exact legal title or name of the respondent.)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Public Utilities Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and including January 1, 1929, to and including Dec - 31, 1929

F. L. Pringle (Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this first day of March, 1930

My commission expires April - 9 - 1932 [Use an impression seal]

Kathryn W. Cook (Signature of officer authorized to administer oaths.)

notary Seal

SUPPLEMENTAL OATH.

(By the president or other chief officer of the respondent.)

State of Ohio }
County of Allen } ss.

E-R. Curtin (Insert here the name of the affiant.) makes oath and says that he is President (Insert here the official title of the affiant.)

of West Ohio Gas Co. (Insert here the exact legal title or name of the respondent.)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above named respondent during the period of time from and including January 1st, 1929, to and including December 31, 1929

Emmett R Curtin (Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this first day of March, 1930

My commission expires April 9 1932 [Use an impression seal]

Kathryn W. Cook (Signature of officer authorized to administer oaths.)

Corporate Seal.

notary Seal

ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC LIGHT COMPANIES CLASS A, B and C

√ Commission Exhibit #3 of March 8, 1933

ANNUAL REPORT

OF

West Ohio Gas Company

Lima Ohio

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31,
1930

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1ST

INSTRUCTIONS

This form of annual report must be filled out and returned to the office of THE PUBLIC UTILITIES COMMISSION OF OHIO, Columbus, Ohio, by March 1st next.

Heretofore, it has been customary to print on the left hand pages instructions for answering questions covered by the opposite page of the report; but the Commission is of the opinion that this is not necessary, as returns often indicate that instructions have not been read or at least have not been followed, and they are therefore omitted from this form. The respondent, however, is urged to ask for instructions should there be any item in the report that is not fully understood and upon such request any information asked for will be furnished promptly.

This report form calls for Artificial Gas, Natural Gas and Electric Light operations, and any company furnishing more than one of these classes of service will report such information as is applicable for each class.

If it is necessary or desirable to insert additional statements, typewritten or other, in this report, care should be taken that they be legibly made on paper of a durable sort and, as a rule of a size not exceeding that of a page. Inserted sheets should be securely attached, preferably at inner margin.

All entries should be made in a permanent black ink, except those of a contrary or unusual character (like deficits for example), which should be made in a permanent red ink.

Each respondent should make its annual report to this Commission in duplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason two copies of the accompanying form are sent to each company concerned.

The word "respondent," whenever used in this report, means the company in whose behalf the report is made.

Attention is called to the following sections of the General Code of Ohio:

Section 614-2. Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation wherever organized or incorporated:

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating, or power purposes to consumers within this state, is a natural gas company;

Section 614-48. Every public utility shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the Commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the Commission. The Commission may at any time, require specific answers to questions upon which it may desire information.

Section 614-65. Whoever being an officer, agent or employe in an official capacity, of a public utility or railroad defined in this act, knowingly violates any provisions of this act, or wilfully fails, omits, or neglects to obey, observe or comply with any lawful order or direction of the Commission made with respect to any public utility or railroad shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than two years, or both, and each day's continuance of such failure, omission or neglect shall constitute a separate offense.

THE INFORMATION CALLED FOR BY EACH PAGE OF THIS REPORT, UNLESS OTHERWISE INDICATED, IS TO BE REPORTED FOR THE ENTIRE COMPANY AND NOT FOR THE STATE OF OHIO ONLY

DO NOT FAIL TO MAKE RETURNS OF INTRASTATE GROSS EARNINGS ON PAGE 50

ANNUAL REPORT

OF

West Ohio Gas Company

Lima Ohio

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31,
1930

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

HISTORY

1. Exact name of company making this report. West Ohio Gas Company.

2. Date of organization. Oct. 24 1924.

3. Under the laws of what Government, State or Territory organized? If more than one name all. Give reference to each statute and amendments thereof.

State of Ohio

4. If a consolidated or merger company name all constituent and all merged companies. Give reference to charters or general laws governing each, and all amendments of same.

Property of the following Co. purchased by respondent Oct. 1924

Lima Natural Gas Co. The Wyakoneta Natl Gas Co.
Lima Gas Light Co. The St. Marys Gas Co.
The Celina Gas Co.

5. Date and authority for each consolidation and each merger. On authority of order 3329-30 issued by the Public Utilities Commission of Ohio. Dated Nov. 26-1924.

6. State whether respondent is a corporation, a joint stock association, a firm or partnership, or an individual.

Corporation

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized and the occasion for the reorganization.

8. State whether or not, the respondent during the year conducted any part of its business under a name, or names, other than that shown, in response to inquiry No. 1, above. If so, give full particulars.

No.

9. Where is the plant or plants located? Lima, Cridersville, Wyakoneta, St. Marys, Celina, Kenton, Columbus Grove, Ottawa, Leipsic, and Bluffton, O.

10. Name below all classes of public service furnished by the respondent: Production and distribution of gas for domestic, commercial and industrial purposes in the above mentioned districts.

DIRECTORS.

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NAME.	POST-OFFICE ADDRESS.	DATE OF EXPIRATION OF TERM.
Samuel Insull	122 S. Mich. Ave. Chicago Ill.	One year from March 1-1930. or until successor is elected
Samuel Insull Jr.	Chicago Ill.	
Emmett R. Curtin	Lima O.	
Emmett R. Curtin Jr.	Lima O.	
J. J. Pringle	Lima O.	
H. O. Bently	Lima O.	
S. E. Mulholland	Ft. Wayne Ind.	

PRINCIPAL OFFICERS.

TITLE.	NAME.	OFFICIAL ADDRESS.
Chairman of the Board,	Samuel Insull	Chicago Ill.
President,	Emmett R. Curtin	Lima O.
First Vice-President,	Samuel Insull Jr.	Chicago Ill.
Second Vice-President,		
Third Vice-President,		
Secretary,	B. P. Shearon	Chicago Ill.
Treasurer,	G. J. Mitchell	Chicago Ill.
General Solicitor,		
Attorney, or General Counsel,	H. O. Bently	Lima O.
Comptroller,	W. A. Saxon	Chicago Ill.
Assistant Comptroller,		
General Auditor,		
Assistant General Auditor,		
General Manager,	Emmett R. Curtin	Lima O.
Chief Engineer,		
Superintendent,		
Managing Agent for the Company in Ohio,		

Location of principal office, at Lima, County of Allen and State of Ohio.

Officer to whom correspondence concerning this report should be addressed:

NAME.	TITLE.	ADDRESS.
Emmett R. Curtin	President	319. West Market St. Lima O.

1. Date of last meeting of stockholders for election of directors. March 11 1930
2. Date of last closing of stock books before end of year for which this report is made. Books do not close
3. Total number of stockholders of record at the date required in answer to Question 2.
4. Has each share of stock one vote? Each share of common stock has one
If otherwise, explain voting rights.

5. Has any issue of securities contingent voting rights? Yes.
If so, explain character of such rights. Preferred stock is entitled to vote in
event of default in four quarterly dividends.
6. Has any issue of securities special privileges in the election of directors? Yes.
If so, explain character of such privileges. Common stock holder elect direct

7. Did any individual, association, corporation or corporations, control the respondent at close of year? Yes.

If control was so held, state:

(a) The form of control, whether sole or joint; Sole

(b) The name of the controlling corporation or corporations; Midland Utilities Compan

(c) The manner in which control was established; Stock Control

(d) The extent of control; Owns all common stock except director
qualifying shares.

(e) Whether control was direct or indirect; Direct

(f) The name of the intermediary through which control, if indirect, was established.

8. Did any individual, association, or corporation, as trustee, control, the respondent at close of year? No

If control was so held, state:

(a) The name of the trustee;

(b) The name of the beneficiary or beneficiaries for whom the trust was maintained.

CORPORATIONS CONTROLLED BY RESPONDENT

NAME.	CONTROL.					
	SOLE OR JOINT.	HOW ESTABLISHED.	EXTENT.	DIRECT OR INDIRECT.	IF INDIRECT, NAME OF INTERMEDIARY THROUGH WHICH CONTROL IS ESTABLISHED.	OTHER PARTIES TO AGREEMENT FOR JOINT CONTROL.
ACTIVE CORPORATIONS:						
			None			
INACTIVE CORPORATIONS:						
			None			

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Give a list showing every agreement, arrangement, or understanding in force at any time during the year, through which agreement, arrangement, or understanding the respondent became obligated or privileged to receive from, or supply to, other corporations or persons, gas, electric energy or property, or to receive or render any service of any class which respondent is obligable or privileged to receive or render, the terms of which agreement differ in any regard whatever from those upon which any person is of common right entitled or bound to supply to, or to receive from, the respondent, gas, electric energy or property, or any service of any kind which respondent is obligable to receive or render. Show for each agreement: (1) the names and addresses of the parties thereto, (2) the date when it became effective, (3) the date when according to its terms it will expire, (4) the consideration upon which it is based, and (5) the amount of business done under it during the year. If there was no such agreement, state that fact.

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SHOW ARTIFICIAL GAS CUSTOMERS ON THIS PAGE

The respondent will show on this page the names of cities or villages in which it supplies artifical gas, with number of customers in each.

If any public utility product other than that designated by pages 6, 7 and 8, is supplied, name such product on this page, giving names of cities or villages supplied, with number of customers in each.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN	NUMBER OF CUSTOMERS
		BROUGHT FORWARD.	
		Lima	9,132
		Ft Shawnee	79
		Ottawa	110
		Leipsic	63
		Bluffton	65
FORWARD.		TOTAL	10,469

8 SHOW NATURAL GAS CUSTOMERS ON THIS PAGE.

The respondent will show on this page the names of cities or villages in which it supplies natural gas, with number of customers in each.
If consumers are supplied outside of cities and villages in rural territory, give name of township with number of customers.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN.	NUMBER OF CUSTOMERS.
		BROUGHT FORWARD.	
		Wyatt [illegible]	1,438
		St Marys	1,365
		[illegible]	1,094
		Kenton	1,870
FORWARD.		TOTAL.	5,767

10 GENERAL BALANCE SHEET

ASSET ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. FIXED CAPITAL ACCOUNTS:		
Fixed Capital—Pages 13, 16, 18	3 904 412 54	
Cost of Fixed Capital purchased		
Construction work in progress		
II. INVESTMENT ACCOUNTS:		
Investment Securities—Page 19	50 00	
Property Used in Other Public Services—Page 19		
Advances to Affiliated Companies for Construction, Equipment, or Additions and Betterments—Page 19		
Other Investments—Page 19		
III. REACQUIRED SECURITIES ACCOUNTS:		
Reacquired Capital Stock	29 000 00	
Reacquired Bonds		
IV. FUND ACCOUNTS:		
Sinking Fund Assets—Page 20		
Depreciation Fund Assets—Page 20		
Insurance and Other Reserve Fund Assets—Page 20		
V. SPECIAL DEPOSIT ACCOUNTS:		
Interest Special Deposits—Page 21		
Dividend Special Deposits—Page 21		
Other Special Deposits—Page 21	800 00	
VI. CURRENT ASSET ACCOUNTS:		
Cash	15 976 54	
Notes Receivable—Page 21		
Accounts Receivable from Consumers	46 402 36	
Accounts Receivable from Affiliated Companies—Page 21	1 636 75	
Other Accounts Receivable	25 059 84	
Matured Interest and Rents Receivable		
Materials and Supplies	41 059 85	
Subscriptions to Capital Stock		
Other Current Assets	25 000 00	
VII. ACCRUED ASSET ACCOUNT:		
Unmatured Interest and Rents Receivable		
VIII. PREPAID ACCOUNTS:		
Prepaid Insurance	87 54	
Prepaid Interest		
Prepaid Taxes		
Other Prepaid Accounts		
IX. DEFERRED CHARGE ACCOUNTS:		
Discount on Capital Stock	90 518 25	
Unamortized Debt Discount and Expense	92 412 72	
Property Abandonments—Page 22		
Extraordinary Casualties		
Non-Productive Well Drilling Expense		
Preliminary Survey and Investigation Charges		
Other Deferred Charges	47 208 87	
Grand Total	4 323 485 24	

GENERAL BALANCE SHEET

LIABILITY ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. CORPORATE CAPITAL LIABILITY ACCOUNTS:		
Capital Stock—Page 23	2 376 381 30	
Installments Paid on Capital Stock Subscriptions		
Stock Liability for Conversion of Securities		
Premium on Capital Stock		
II. NON-CORPORATE PROPRIETORSHIP ACCOUNTS:		
Sole Proprietorship		
Partnership		
III. FUNDED DEBT ACCOUNTS—Page 23		
Bonds	1 000 000 00	
Real Estate Mortgages		
Advances from Affiliated Companies for Construction Equipment, or Additions and Betterments		
Other Funded Debt		
IV. CURRENT LIABILITY ACCOUNTS:		
Receiver's Certificates		
Indemnity		
Workmen's Compensation		
Notes Payable—Page 25	600 000 00	
Consumer's Deposits	48 389 09	
Accounts Payable to Affiliated Companies—Page 25	9 452 76	
Other Accounts Payable	50 067 68	
Matured Funded Debt—Page 25		
Matured Interest on Funded Debt		
Matured Interest on Unfunded Debt		
Dividends Payable		
Service Billed in Advance		
Capital Stock Subscribed		
Other Current Liabilities	722 85	
Contract Contracts	5 000 00	
V. ACCRUED LIABILITY ACCOUNTS:		
Unmatured Interest Accrued on Funded Debt	5 000 00	
Unmatured Interest Accrued on Unfunded Debt		
Taxes Accrued	166 67	
Other Accrued Liabilities	51 606 55	
VI. DEFERRED CREDIT ACCOUNTS:		
Unamortized Premium on Debt		
Other Deferred Credits		
Public improvement assessments	1 952 93	
VII. RESERVE ACCOUNTS:		
Insurance Reserve—Page 26		
Injuries and Damages Reserve—Page 26	2 051 04	
Uncollectible Consumers' Accounts Reserve—Page 26	4 213 82	
Depreciation of Structures and Equipment Reserve—Page 27	286 888 52	
Amortization of Other Capital Reserve—Page 26	90 911 56	
Other Reserves—Page 26		
Contributions for extensions	866 31	
VIII. APPROPRIATED SURPLUS ACCOUNTS:		
Surplus Invested in Fixed Capital		
Funded Debt Retired through Surplus		
Surplus Reserved for Sinking Funds		
Other Surplus Reserves		
IX. UNAPPROPRIATED SURPLUS ACCOUNT:		
Corporate Surplus Unappropriated*	65 081 18	
Grand Total	4 323 475 24	

*Insert "Debit" or "Credit" as may be appropriate, showing the amount of debit in red.

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

ACCOUNT.	Balance at beginning of year.	Charges for Capital added during year.	Credits made to sub-account during year.	Balance at close of year.
INTANGIBLE FIXED CAPITAL:				
1. Organisation				
2. Franchises				
3. Miscellaneous intangible capital				
TANGIBLE FIXED CAPITAL:				
4. Land:				
(a) Land occupied by gas works				
(b) Land occupied by outside holder stations	4 834 37			4 834 37
(c) Rights of way				
(d) Water rights				
(e) General office land				
(f) Miscellaneous land devoted to gas operations				
5. Structures:				
(a) Works and station structures				
(b) Holders	38 282 56			38 282 56
(c) General office structures				
(d) Miscellaneous structures devoted to gas operations	22 330 21			22 330 21
6. Boiler plant equipment	1 743 80			1 743 80
7. Steam engines				
8. Internal combustion engines				
9. Accessory power equipment				
10. Benches and retorts				
11. Water gas sets				
12. Purification apparatus	5 958 00			5 958 00
13. Accessory works equipment				
14. Mains	2 887 42			2 887 42
15. Services				
16. Consumers' meters				
17. Consumers' Meter installation				
18. Street lighting equipment				
19. Gas appliances				

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS (Continued)

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS—(Continued)

ACCOUNT	Balance at beginning of year.	Charges for capital added during year.	Credits made to sub-account during year.	Balance at close of year.
20. General equipment:				
(a) General office equipment				
(b) Shop equipment				
(c) Stores equipment				
(d) Transportation equipment				
(e) Telephone, telegraph and wireless system				
(f) Laboratory equipment				
(g) Miscellaneous equipment				
21. Miscellaneous tangible capital				
22. Engineering and superintendence during construction				
23. Law expenditures during construction				
24. Injuries and damages during construction				
25. Taxes during construction				
26. Interest during construction				
27. Miscellaneous construction expenditures				
28. Fixed capital not classified by prescribed accounts				
29. Cost of plant and equipment purchased				
30. Unfinished Plant Investment (construction work in progress)				
Total	76 036 36			76 036 36

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FIXED CAPITAL INSTALLED PRIOR TO ~~JANUARY 1, 1921~~ Dec 1 1920

Give particulars of the credits made during the year in the accounts of the respondent representing its plant and equipment installed in service prior to January 1, 1921.

If the respondent's classification of fixed capital accounts in conformity with the principles embodied in the account for Fixed Capital Installed since December 31, 1920, became effective at an earlier date, the dates in the headings of the present schedule and the following schedule may be correspondingly modified.

Names of subaccounts shown in column (a) should be those carried on the respondent's books of account immediately prior to the adoption of the Uniform System of Accounts for Natural Gas Companies or its equivalent.

If the respondent's accounts representing plant and equipment installed prior to January 1, 1921, have been reclassified in accordance with the rules governing accounts for fixed capital installed since December 31, 1920, there may be shown in column (a) the names of accounts now carried on respondent's books representing such plant and equipment instead of those carried prior to the adoption of the Uniform System of Accounts for Natural Gas Companies.

In connection with the credits called for in column (c) of this schedule and column (d) of schedule on page 15, see paragraph 2, page 18, of the Uniform System of Accounts for Natural Gas Companies.

NAMES OF ACCOUNTS KEPT PRIOR TO JANUARY 1, 1921. (a)	Balance at beginning of year. (b)	Credits made to subaccounts during year. (c)	Balance at close of year. (d)
Natural property purchased	3 106 025 39	659 38	3 105 366 01
Total	3 106 025 39	659 38	3 105 366 01

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FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1936—NATURAL GAS

ACCOUNT. (a)	Balance at beginning of year. (b)	Charges for capital added during year. (c)	Credits made to sub-account during year. (d)	Balance at close of year. (e)
I. UNDISTRIBUTED FIXED CAPITAL ACCOUNTS:				
205 Organization	28 812 73	2 009 50		30 822 23
201 Franchises				
202 Patent Rights and Licenses				
203 Other Undistributed Fixed Capital				
II. PRODUCTION SYSTEM PROPERTY ACCOUNTS:				
204 Land				
205 Leaseholds				
206 Rights of Way				
207 Natural Gas Rights				
208 Gas Well Structures				
209 Field Measuring Station Structures				
210 Other Production System Structures				
211 Gas Well Construction				
212 Gas Well Equipment				
213 Field Line Construction				
214 Field Line Equipment				
215 Field Measuring Station Equipment				
216 Drilling and Cleaning Equipment				
217 Other Production System Equipment				
III. TRANSMISSION SYSTEM PROPERTY ACCOUNTS:				
218 Land				
219 Leaseholds	516 26	182 11		1 362 14
220 Rights of Way				
221 Compressing Station Structures		1 299 50		1 299 50
222 Transmission System Measuring Station Structures		2 002 45		2 002 45
223 Other Transmission System Structures				
224 Compressing Station Equipment				
225 Transmission System Measuring Station Equipment		2 185 46		2 185 46
226 Transmission Line Equipment				
227 Other Transmission System Equipment		5 569 70		5 569 70
IV. DISTRIBUTION SYSTEM PROPERTY ACCOUNTS:				
228 Land				
229 Leaseholds				
230 Rights of Way				
231 District Regulator Structures	427 66	1 805 35		2 233 01
232 Other Distribution System Structures		1 776 47		1 776 47
233 Gas Receivers and District Regulators	2 415 42			2 415 42
234 Distribution Line Equipment	163 435 23	7 912 25		171 347 48
235 Service Line Equipment	38 950 18	1 796 65	25 17	40 721 66
236 Meters	21 189 63	3 044 68		24 234 31
237 Meter Installations	7 426 01	2 552 73		10 977 74
238 House Regulators		3 298 65		3 298 65
239 Other Distribution System Equipment				

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FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1920—NATURAL GAS

ACCOUNT (a)	Balance at beginning of year (b)	Charges for capital added during year (c)	Credits made to sub-account during year (d)	Balance at close of year (e)
V. UTILIZATION SYSTEM PROPERTY ACCOUNTS:				
240 Commercial Lighting System				
241 Municipal Street Lighting System				
242 Private Street Lighting System				
243 Other Utilization Equipment				
VI. GENERAL PROPERTY ACCOUNTS:				
244 General Office Land	50 000 00			50 000 00
245 Other General Land				
246 Leaseholds				
247 General Office Structures	639 68	101 933 35		102 433 03
248 Other General Structures				
249 General Office Equipment	8 471 67	5 341 57		13 813 24
250 General Store Equipment				
251 General Shop Equipment	1 433 61			1 433 61
252 General Stable Equipment				
253 General Garage Equipment				
254 General Laboratory Equipment	12 970 49	540 25	590 50	12 920 24
255 General Telephone and Telegraph System				
256 General Tools and Implements				
257 Other General Equipment	1 305 70	7 09		1 312 79
VII. UNDISTRIBUTED CONSTRUCTION EXPENDITURE ACCOUNTS:				
258 Engineering and Superintendence during construction				
259 General Officers' and Clerks' salaries during construction				
260 General Officers' and Clerks' expenses during construction				
261 Office Supplies and Expenses during construction				
262 Law Expenditures during construction				
263 Injuries and Damages during construction				
264 Insurance during construction Construction in progress				
265 Taxes during construction	10 846 36	157 359 16		238 228 22
266 Interest during construction	450 02			450 02
267 Other Expenditures during construction	71 00			71 00
Total	420 482 45	303 143 39	615 67	723 010 17
SUMMARY OF FIXED CAPITAL:				
Installed Prior to January 1, 1921	3 106 025 39		657 38	3 105 366 01
Installed Since December 31, 1920	420 482 45	303 143 39	615 67	723 010 17
	3 526 507 84	303 143 39	1 273 05	3 828 376 18

1020-1022

INVESTMENT SECURITIES

NAME OF ISSUING COMPANY AND DESCRIPTION OF SECURITY HELD.	PLEDGED.		UNPLEDGED.		INCOME DERIVED		Extent of control, if control exists.
		Book value.	Par value.	Book value	Rate. Amount of dividends.	Amount of interest.	
Investment of Affiliated Companies:							
			None.				
Investment of Non-Affiliated Companies:							
			None				
Other Investments:							
One share no par stock of the Lyon Carolina Co		50 00			50	16 00	
Total		50 00				16 00	

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FUND ACCOUNTS

NAME OF FUND.	Par value.	Book value.	Balance in Fund at beginning of year.	Additions to Fund During Year.	Withdrawals from Fund During Year.	Balance in Fund at close of year.
Sinking Fund Assets.		None				
Depreciation Fund Assets:		None				
Insurance and Other Reserve Fund Assets:		None				
Total						

CASH AND SPECIAL DEPOSITS

Name of depositary.	Purpose of Deposit	Amount at close of year			
The Lima Trust Co. Lima, O.	Operation		11	687	95
Peoples Natl Bank Waynesville, O.	"			588	[illegible]
American State Bank Mt. Mary, O.	"			420	[illegible]
Commercial Bank Co. Clinton, O.	"			401	6[illegible]
Peoples Exchange Bank Col. Troy, O.	"			245	41
The Bank of Ottawa Ottawa, O.	"			432	67
The Bank of Leipsic Leipsic, O.	"			577	47
The Commercial Bank & Loving Co. Bluffton, O.	"			295	96
" " " Kenton, O.	"			459	11
Approval fund Lima Trust Co.				200	00
Daley-Stuart Co. Chicago Ill.	To cover 2% nominal tax on bond holdings in trust			600	00
Petty cash funds.				870	70
	Total		16	776	54

NOTES AND ACCOUNTS RECEIVABLE

Bills Receivable.

Name of debtor	Amount at close of year
None	
Total	

***Miscellaneous Accounts Receivable.**

Name of debtor	Amount at close of year		
Acct. Rec. Costumes	46	442	34
" " Mercantile	22	298	96
" " Misc.	2	760	88
Total	71	502	18

ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES

Name of debtor.	Character of transaction	Amount at close of year		
The Alphos Gas Co.	Gas & material supplied.	1	497	75
Indiana Elec Corp.	Services rendered.		39	00
	Total	1	536	75

*Show principal items only. Minor items may be reported in one group.

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PROPERTY ABANDONED

Items.	Year of Abandonment	Balance in Account at beginning of year	Amount Charged to Account during year	Amount Credited to Account during year	Balance in Account at close of year
		None.			
Total.					

REMARKS

CLASS OF STOCK.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF EACH SHARE.	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. Rate	AMOUNT.
Common	75,000	$100.00		75,000					
Preferred class "A"	5,000	$100.00	500,000	500,000				7	35,000 00
" " "B"	14,000	$100.00	1400,000	1400,000				7	70,000 00
TOTAL									105,000 00

FUNDED DEBT.

DESIGNATION OF BOND OR OBLIGATION.	TERM. Date of Issue	TERM. Date Due	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY	IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION	INTEREST. Rate	When Due	AMOUNT ACCRUED DURING YEAR.	AMOUNT PAID DURING YEAR.
First and refunding	04/30	04/54	1,000,000	1,000,000			1,000,000	6	04/04	60,000 00	60,000 00
TOTAL			$ 1,000,000	$ 1,000,000			$ 1,000,000			60,000 00	60,000 00

*Purpose for which issue was authorized.

Receipts Outstanding at the close of the year for installments received on subscriptions for stocks were as follows:

Common stock, $; Second preferred stock, $; First preferred stock, $; Debenture stock, $; All classes, $

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SECURITY FOR FUNDED DEBT.

DESIGNATION OF BOND OR OBLIGATION	PROPERTY MORTGAGED AND SECURITIES PLEDGED. DESCRIPTION.	VALUE.	REMARKS.
First and refunding mortgage bonds	Entire property.	3 904 412 54	

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SUNDRY CURRENT LIABILITIES

NAME OF CREDITOR OR OBLIGATION.	CHARACTER OF TRANSACTIONS INVOLVED.	Credit balance at close of year.
	Notes Payable	
Midland Utilities Co.	Advance for construction	400 000 00
	Total,	400 000 00
	Accounts Payable to Affiliated Companies	
Northern Ind. Pub. Service Co.	Services rendered	1 51
Ins. Trustees	Premiums	179 39
Midland Utility of Ind.	Supplies furnished	161 51
Midland Utilities Co.	Interest on loans and quarterly payment of Federal Tax	4 894 24
Midland United Co.	Services rendered	3 216 11
	Total,	8 452 76
	Matured Funded Debt	
	Total,	408 452 76

DEPRECIATION OF STRUCTURES AND EQUIPMENT RESERVE

DEBIT ITEMS.		CREDIT ITEMS.	
Retirements During the Year	8 175 04	Balance at Beginning of Year	186 789 82
Other Debits:	295 68	Amount Reserved During the Year by Charges to Operating Expenses	58 565 42
		Other Credits:	
Balance at Close of Year	236 884 52		
Total,	245 355 24	Total,	245 355 24

BASIS FOR DEPRECIATION RESERVE.

Explain here in detail the basis upon which the charge to operating expenses on account of depreciation is founded and also the method by which the amount in question was derived. The amount here shown will be the same as that carried to "Depreciation of Structures and Equipment Reserve" on the General Balance Sheet.

General property depreciated in accordance with order of the Public Utilities Commissions of Ohio.

Automatic utilization equipment depreciated on basis of actual cost of equipment less estimated salvage amortized over life.

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RESERVES

DEBIT ITEMS				CREDIT ITEMS			
INSURANCE RESERVES							
				Balance at Beginning of Year			
				Amount Reserved During the Year by Charges to Operating Expenses			
				Other Credits:			
Balance at Close of Year							
Total				Total			
INJURIES AND DAMAGES RESERVE							
Charges arising out of minor accidents and damages.		350	47	Balance at Beginning of Year	2	301	51
				Amount Reserved During the Year by Charges to Operating Expenses			
				Other Credits:			
Balance at Close of Year	2	651	98				
Total	2	301	51	Total	2	301	51
UNCOLLECTIBLE CONSUMERS' ACCOUNTS RESERVE							
				Balance at Beginning of Year	4	447	10
Worthless bills charged off	3	378	28	Amount Reserved During the Year by Charges to Operating Expenses	4	242	72
Adjusting 1929 reserve.	1	071	54	Other Credits:			
Balance at Close of Year	4	242	82				
Total	8	442	64	Total	8	442	64
AMORTIZATION OF ~~OTHER CAPITAL~~ RESERVE Pole Line.							
				Balance at Beginning of Year	64	108	54
				Amount Reserved During the Year by Charges to Operating Expenses	11	708	00
				Other Credits:			
Balance at Close of Year	75	811	54				
Total	75	811	54	Total	75	811	54
OTHER RESERVES							
				Balance at Beginning of Year			
None				Amount Reserved During the Year by Charges to Operating Expenses			
				Other Credits:			
Balance at Close of Year							
Total				Total			

MEMORANDUM

Use this page for an explanation of any item contained in this report where sufficient space is not available.

CORPORATE SURPLUS UNAPPROPRIATED

ITEM	DEBITS				CREDITS				REMARKS
CREDITS:									
Credit balance at beginning of year	**	**	**	*		52	887	84	
Credit balance transferred from Income Account	**	**	**	*		2	143	34	
Uncollectible Consumers' Accounts recovered	**	**	**	*					
Uncollectible Non-Operating Revenues recovered	**	**	**	*					
Other Additions to Surplus	**	**	**	*					
Miscellaneous Credits	**	**	**	*					
DEBITS:									
Debit balance at beginning of year					**	**	**	*	
Debit balance transferred from Income Account					**	**	**	*	
Surplus Appropriated for Sinking Funds					**	**	**	*	
Surplus Appropriated for Other Reserve Funds					**	**	**	*	
Surplus Appropriated for Dividends—Page 28					**	**	**	*	
Surplus Appropriated for Investment in Fixed Capital					**	**	**	*	
Gifts to Affiliated Companies					**	**	**	*	
Expenses unprovided for elsewhere					**	**	**	*	
Amortization unprovided for elsewhere					**	**	**	*	
Other Appropriations of Surplus					**	**	**	*	
Other Deductions from Surplus					**	**	**	*	
Uncollectible Consumers' Accounts—Old Year					**	**	**	*	
Uncollectible Non-Operating Revenues—Old Year					**	**	**	*	
Miscellaneous Debits					**	**	**	*	
Balance carried forward to Balance Sheet		55	031	18					
Total		55	031	18		55	031	18	

DIVIDENDS DECLARED DURING THE YEAR

NAME OF SECURITY ON WHICH DIVIDEND WAS DECLARED	Rate Per Cent. Regular	Rate Per Cent. Extra	For value of amount on which dividend was declared			*Amount of dividend			Date Declared	Date Payable
Dividends Charged to Income:										
Class "A" preferred quarterly	1 3/4		300	000	00	5	250	00	4/10/30	4/1/30
" " " "	"		300	000	00	5	250	00	4/30/30	6/2/30
" " " "	"		300	000	00	5	250	00	7/25/30	9/2/30
" " " "	"		300	000	00	5	250	00	10/24/30	12/1/30
" "B" " "	"		450	000	00	7	875	00	1/10/30	3/1/30
" " " "	"		450	000	00	7	875	00	4/30/30	6/2/30
" " " "	"		450	000	00	7	875	00	7/25/30	9/2/30
" " " "	"		450	000	00	7	875	00	10/24/30	12/1/30
Common stock 10% per share						7	500	00	8/24/30	6/10/30
" " 20 " "						15	000	00	10/24/30	12/1/30
" " 40 " "						30	000	00	10/24/30	12/1/30
Total Charged to Income						105	000	00		
Dividends Charged to Surplus:										
Difference between dividends declared and dividends charged [illegible] page 27, each of both [illegible]										
Total Charged to Surplus:										
Grand Total						105	000	00		

*Total of this column should correspond with like item on page 28

INCOME ACCOUNT
(Entire Company)

ACCOUNT.	AMOUNT			REMARKS.
I. OPERATING INCOME:				
1. Operating Revenues—Page 30	721	340	07	
2. Operating Expenses—Pages 32-36-40	481	756	17	
3. *Net Operating Revenue	239	583	90	
II. NON-OPERATING REVENUES AND EXPENSES				
4. Revenues—Page 41	54	594	56	
5. Expenses—Page 41	54	719	39	
6. *Net Non-Operating Revenue		224	53	
7. *Total Net Operating Income (Total Items 3 & 6)	239	359	37	
8. Taxes Assignable to Operations—Page 43	55	482	14	
9. *Gross Income (Item 7 less Item 8)	183	877	23	
III. GROSS INCOME DEDUCTIONS.				
10. Rent for Lease of Public Utility Properties—Page 44				
11. Joint Facility Rent				
12. Other Rent Deductions				
13. Interest Accrued on Funded Debt—Page 23	60	000	00	
14. Interest Accrued on Unfunded Debt	14	260	81	
15. Guaranties of Periodic Payments				
16. Loss on Operations of Others				
17. Other Contractual Deductions from Income				
18. Amortization of Debt Discount and Expense				
19. Amortization of Interests in Landed Capital	3	913	68	
20. Other Deductions from Income				
21. Amortization of Premium on Debt		563	15	
22. Total Deductions from Gross Income	78	737	64	
23. *Net Income (Item 9 less Item 22)	105	139	59	
IV. NET INCOME APPROPRIATIONS				
24. Net Income Appropriated for Sinking Funds—Page 45				
25. Net Income Appropriated for Depreciation Reserve Fund—Page 45				
26. Net Income Appropriated for Other Reserve Funds—Page 45				
27. Net Income Appropriated for Dividends—Page 28				
28. Net Income Appropriated for Investment in Fixed Capital—Page 45	102	996	25	
29. Total Appropriations of Income	102	996	25	
30. *Balance transferred to surplus—Page 28 (Item 23 less Item 29).	2	143	34	

31. The operating revenues and expenses above stated relate to the period beginning June 1, 1930, and ending Dec. 31, 1930

*If difficult, in Red.

ACCOUNT.	CLASS			AMOUNT.			REMARKS.
ARTIFICIAL GAS REVENUES:							
1. Metered Domestic and Commercial Sales	A	B	C	465	703	18	
2. Metered Industrial Sales	A	B	C	21	082	11	
3. Metered Sales for Municipal Street Lighting	A	B	C				
4. Metered Sales for Other Municipal Purposes	A	B	C	1	127	67	
5. Metered Sales to Other Gas Utilities	A	B	C	4	028	49	
6. Flat-Rate Sales to General Consumers	A	B	C				
7. Flat-Rate Sales for Municipal Street Lighting	A	B	C				
8. Flat-Rate Sales for Other Municipal Purposes	A	B	C				
9. Prepaid Gas Sales	A	B	C				
10. Commissions on Others' Gas	A	B	C				
11. Consumers' Discounts Forfeited and Penalties Imposed	A	B	C	4	577	38	
Total Artificial Gas Revenues				496	770	77	
NATURAL GAS REVENUES:							
1. Metered Private Sales			C				
2. Metered Domestic and Commercial Sales	A	B		216	394	43	
3. Metered Industrial Sales	A	B		6	583	24	
4. Other Metered Private Sales	A	B					
5. Metered Sales of Other Natural Gas Utilities			C				
6. Metered Sales to Affiliated Natural Gas Utilities	A	B					
7. Metered Sales to Non-affiliated Natural Gas Utilities	A	B					
8. Metered Public Sales	A	B	C		949	75	
9. Unmetered Private Sales			C				
10. Unmetered Domestic and Commercial Sales	A	B					
11. Unmetered Industrial Sales	A	B					
12. Unmetered Sales for Lighting Private Streets	A	B					
13. Other Unmetered Private Sales	A	B					
14. Unmetered Sales to Other Natural Gas Utilities			C				
15. Unmetered Sales to Affiliated Natural Gas Utilities	A	B					
16. Unmetered Sales to Non-affiliated Natural Gas Utilities	A	B					
17. Unmetered Public Sales			C				
18. Unmetered Sales for Municipal Street Lighting	A	B					
19. Unmetered Sales for Other Municipal Uses	A	B					
20. Consumers' Discounts Forfeited and Penalties Imposed	A	B	C		571	88	
21. Allowances to Customers	A	B	C				
Total Natural Gas Revenues				224	469	30	
ELECTRIC REVENUES:							
1. Municipal Light and Power Revenues			C				
2. Municipal Street Lighting—Arc	A	B					
3. Municipal Street Lighting—Incandescent	A	B					
4. Other Municipal Light and Power Revenues—Metered	A	B					
5. Other Municipal Light and Power Revenues—Flat-Rate	A	B		Not applicable			
6. Private Light and Power Revenues			C				
7. Residence Light and Power Revenues—Metered	A	B					
8. Residence Light and Power Revenues—Flat-Rate	A	B					
9. Commercial Light and Power Revenues—Metered	A	B					
10. Commercial Light and Power Revenues—Flat-Rate	A	B					
11. Miscellaneous Electric Revenues			C				
12. Sales to Other Public Utilities	A	B					
13. Other Miscellaneous Electric Revenues	A	B					
Total Electric Revenues							
Grand Total Operating Revenues				721	940	07	

OPERATING EXPENSES — ARTIFICIAL GAS
(Entire Company)

ACCOUNT.	AMOUNT.		
I. Production Expenses:			
1. Works Superintendence,			
2. Works Labor,	1	800	00
3. ~~Boiler Fuel,~~ Mtce. purification apparatus.	3	518	94
4. ~~Water,~~ " laboratory equipment.		248	53
5. ~~Fuel Under Retorts,~~ Holder stock adjustment.		62	46
6. ~~Coal Carbonized,~~ Purification labor.		73	50
7. ~~Coal-Gas Enrichers,~~ Misc. works labor		201	58
8. Generator Fuel,	2	240	78
9. ~~Water-Gas Oil,~~ Dup. production charges	26	426	45
10. ~~Purifying Supplies,~~ Steam generated apport. acct.		345	50
11. Miscellaneous Works Expense,	12	415	32
12. Gas Storage,	1	033	13
13. ~~Gas from Other Sources,~~ Mtce. of holders.		954	99
14. Works and Station Structures — Maintenance,		246	16
15. Power-Plant Equipment — Maintenance,		516	13
16. Gas Apparatus — Maintenance,		265	68
17. ~~Works Tools — Maintenance,~~ Accessory works equipment	1	136	17
		312	25
Total Production Expenses,	50	859	57
II. Transmission and Distribution Expenses:			
18. Transmission Pumping, Dup. dist. chg. (cr)	5	[illegible]	[illegible]
19. Distribution Superintendence,		24	40
20. Distribution Supplies and Expenses, and operating labor.	3	708	67
21. ~~Gas Meter and Installation Work,~~ Maps and records.	2	934	30
22. Work on Consumers' Premises,		852	63
23. Gas Mains and Services — Maintenance,	6	246	85
24. Gas Meters — Maintenance,	7	706	36
25. Distribution Tools — Maintenance, shop building	9	210	46
26. Gas Appliances — Maintenance,		264	79
	2	755	77
Total Transmission and Distribution Expenses,	38	676	69
III. Street and Park Lighting Expenses:			
27. Street Lamp Operation,			
28. Street Lamps — Maintenance,			
Total Street and Park Lighting Expenses,			
IV. Commercial Expenses:			
29. Commercial Administration, other commercial labor	12	[illegible]	57
30. ~~Advertising,~~ Meter reading	4	980	03
31. Other Commercial Expenses,	3	947	20
Total Commercial Expenses,	21	895	80
Natural gas purchased.	108	614	99

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OPERATING EXPENSES—ARTIFICIAL GAS—(Concluded.)
(Entire Company)

ACCOUNT.	AMOUNT.		
V. NEW BUSINESS EXPENSES:			
32. New business salaries	1	823	92
33. ~~New business supplies and expenses~~ Demonstrations	1	937	90
34. Advertising supplies and expenses	1	599	67
35. Canvassing and soliciting	9	434	52
36. Miscellaneous new business supplies and expenses		520	68
Total New Business Expenses	15	316	69
VI. GENERAL AND MISCELLANEOUS EXPENSES:			
37. Salaries and expenses of general officers	14	271	04
38. Salaries and expenses of general office clerks	7	067	76
39. General office supplies and expenses	2	064	02
40. General law expenses	1	700	40
41. Miscellaneous general expenses	3	978	37
42. Insurance	3	240	03
43. Relief department and pensions	1	468	45
44. ~~Gas franchise requirements~~ Regulatory commission expense	2	027	26
45. ~~Uncollectible Consumers' Accounts~~ Midland Co. service	5	909	38
46. ~~Residuals expense~~ Donations	2	079	17
47. ~~General amortization~~ Association Exp.	1	024	06
48. Injuries to persons and property		2	96
49. Stationery and printing		506	05
50. ~~Store expenses~~ Stocks, bonds, expense	1	534	69
51. ~~Stable expenses~~ Inv. expense		433	31
52. Miscellaneous adjustments—Balance		592	14
53. General structures—Maintenance		2	75
~~Total General and Miscellaneous Expenses~~ Gen. publicity & advertising	1	202	54
Employees' gift insurance		704	25
Dep. misc. charges (Cr.)	1	669	53
Uncollectable bills	2	294	58
Indirect charges to construction (Cr.)	8	655	86
~~Recapitulation of Operating Expenses~~ Total general and misc. expenses	40	381	12
I. Production	50	159	59
II. Transmission and Distribution	38	476	69
III. Street and Park Lighting			
IV. Commercial	21	295	80
V. New Business	15	316	69
VI. General and Miscellaneous	40	381	12
Natural gas purchased	108	614	99
TOTAL	275	144	86

NATURAL GAS—OPERATING EXPENSES
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.			
	A. PRODUCTION SYSTEM ACCOUNTS:							
	Operating Labor		B	C				
350	Superintendence	A						
351	Gas Well and Field Line Labor	A						
352	Field Measuring Station Labor	A						
353	Other Labor	A						
	Operating Supplies and Expenses		B	C				
354	Superintendence Supplies and Expenses	A						
355	Gas Well and Field Line Supplies and Expenses	A						
356	Field Measuring Station Supplies and Expenses	A						
357	Production System Rent	A						
358	Other Supplies and Expenses	A						
359	Gas Well Royalties	A	B	C				
360	Rental on Unoperated Leases	A	B	C				
	Maintenance of Production System Structures		B	C				
361	Maintenance of Gas Well Structures	A						
362	Maintenance of Other Production System Structures	A						
	Maintenance of Production System Equipment			C				
	Maintenance of Gas Well and Field Line Equipment		B					
363	Maintenance of Gas Well Equipment	A						
364	Maintenance of Field Line Equipment	A						
365	Abandoning Wells and Changing Field Lines	A						
	Maintenance of Other Production System Equipment		B					
366	Maintenance of Field Measuring Station Equipment	A						
367	Maintenance of Drilling and Cleaning Equipment	A						
368	Maintenance of Other Production Equipment	A						
	Total Production Expenses							
	B. NATURAL GAS PRODUCED BY OTHERS:							
369	Natural Gas Purchased for Resale	A	B	C		99	164	56
370	Purchased Gas Expense	A	B	C				
	Total Produced Expense							
	C. TRANSMISSION SYSTEM ACCOUNTS:							
	Operating Labor		B	C				
371	Superintendence	A						
372	Compressing Station Labor	A						
373	Measuring Station Labor	A						
374	Transmission Line Labor	A						
375	Other Transmission System Labor	A						
	Operating Supplies and Expenses		B	C				
376	Superintendence Supplies and Expenses	A						
377	Compressing Station Supplies and Expenses	A						
378	Measuring Station Supplies and Expenses	A						
379	Transmission Line Supplies and Expenses	A						
380	Transmission System Rent	A						
381	Other Transmission System Supplies and Expenses	A						
	Maintenance of Transmission System Structures		B	C				
382	Maintenance of Compressing Station Structures	A						
383	Maintenance of Other Transmission System Structures	A						
	Maintenance of Transmission System Equipment			C				
384	Maintenance of Compressing Station Equipment	A	B					
	Maintenance of Transmission Lines		B					
385	Maintenance of Transmission Line Equipment	A						
386	Changing Transmission Lines	A						
	Maintenance of Other Transmission System Equipment		B					
387	Maintenance of Measuring Station Equipment	A						
388	Maintenance of Other Transmission Equipment	A						
	Total Transmission Expenses							

NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.			
	D. DISTRIBUTION SYSTEM ACCOUNTS:							
	Operating Labor							
389	Superintendence		B	C				
390	Distribution Line Labor	A				4	522	58
391	Labor Removing and Resetting Meters and House Regulators	A						
392	Labor Inspecting and Testing Meters and House Regulators	A					858	16
393	Other Meter Department Labor	A						
394	~~Other Distribution System Labor~~ Operating Labor	A				1	019	48
	Operating Supplies and Expenses		B	C				
395	Superintendence Supplies and Expenses	A				1	836	27
396	Distribution Line Supplies and Expenses	A						
397	Meter Department Supplies and Expenses	A						
398	~~Distribution System Rent~~ Maps and records	A					32	42
399	Other Distribution System Supplies and Expenses	A						
400	Maintenance of Distribution System Structures work on customers premises.	A	B	C			855	80
	Maintenance of Distribution System Equipment			C				
	Maintenance of Distribution System Lines		B					
401	Maintenance of Distribution Line Equipment	A					802	09
402	Changing Distribution Lines	A						
403	Maintenance of Service Line Equipment	A					313	62
	Maintenance of Meters and House Regulators		B					
404	Maintenance of Meters	A				1	069	47
405	Maintenance of House Regulators	A					6	57
	Maintenance of Other Distribution System Equipment		B					
406	Maintenance of Gas ~~Receivers and District Regulators~~ appliances	A				1	460	42
407	Maintenance of Other Distribution Equipment	A					56	54
	Dup. discount charges (00)						32	41
	Total Distribution Expenses					12	807	01
	E. UTILIZATION SYSTEM ACCOUNTS:							
	Operating Labor							
408	Commercial Lighting System Labor		B	C				
409	Municipal Street Lighting System Labor	A						
410	Private Street Lighting System Labor	A						
411	Consumer's Premises Labor	A						
	Operating Supplies and Expenses	A						
412	Commercial Lighting System Supplies and Expenses		B	C				
413	Municipal Street Lighting System Supplies and Expenses	A						
414	Private Street Lighting System Supplies and Expenses	A						
415	Consumers' Premises Supplies and Expenses	A						
	Maintenance of Utilization System Equipment	A						
416	Maintenance of Commercial Lighting System		B	C				
417	Maintenance of Municipal Street Lighting System	A						
418	Maintenance of Private Street Lighting System	A						
419	Maintenance of Other Utilization Equipment	A						
		A						
	Total Utilization Expenses							
	F. COMMERCIAL DEPARTMENT ACCOUNTS:							
420	Operating Labor	A	B	C		5	050	71
421	Operating Supplies and Expenses	A	B	C		3	602	92
	Meter reading					1	473	00
	Total Commercial Expenses					10	126	63
	G. NEW BUSINESS DEPARTMENT ACCOUNTS:							
	New Business Salaries and Commissions		B	C				
422	New Business Salaries	A					145	18
423	~~New Business Commissions~~ Canvassing and soliciting	A				1	744	25
424	New Business Supplies and Expenses	A	B	C			124	08
425	New Business Piping Labor	A	B	C			195	55
426	~~New Business Piping Supplies and Expenses~~ Advertising	A	B	C			114	79
	Demonstrations							
	Total New Business Expenses					2	823	85

NATURAL GAS—OPERATING EXPENSES—(Continued)
(Entire Company)

ACCOUNT.	CLASS.			AMOUNT.		
H. GENERAL ADMINISTRATIVE ACCOUNTS:						
General Administrative Salaries		B	C			
427 Salaries of General Officers	A			6	528	96
428 Salaries of General Office Clerks	A			3	221	89
General Administrative Supplies and Expenses			C			
General Administrative Supplies		B				
429 General Office Stationery and Printing	A				233	45
430 Other General Office Supplies	A				948	85
General Officers' and General Office Clerks' Expenses		B				
431 General Officers' Expenses	A					
432 General Office Clerks' Expenses	A					
Other General Administrative Expenses		B				
433 General Law Expenses	A				708	26
434 General Office Rent	A					
435 Other General Office Expenses	A					
436 Maintenance of General Office Structures	A	B	C		1	25
437 Maintenance of General Office Equipment	A	B	C		125	22
Total Administrative Expenses				11	767	88
I. OTHER GENERAL EXPENSE ACCOUNTS:						
General Labor			C			
438 Store Labor	A	B				
Stable and Garage Labor		B				
439 ~~Stable Labor~~ General publicity and advertising	A				465	28
440 Garage Labor	A					
~~Shop and Laboratory Labor~~ Stock and bond expense		B			706	49
441 Shop Labor Donations	A				150	94
442 Laboratory Labor Association expense	A				204	36
443 Telephone and Telegraph System Labor	A	B				
General Supplies and Expenses			C			
444 Store Supplies and Expenses	A	B				
Stable and Garage Supplies and Expenses		B				
445 ~~Stable Supplies and Expenses~~ Undistributed adjustments	A				271	97
446 Garage Supplies and Expenses	A					
~~Shop and Laboratory Supplies and Expenses~~ Inv. expense		B			197	91
447 ~~Shop Supplies and Expenses~~ Employee gift insurance.	A				322	85
448 Laboratory Supplies and Expenses	A					
449 ~~Telephone and Telegraph System Supplies and Expenses~~	A	B				
450 ~~Natural Gas Franchise Requirements~~ Midland Co. services.	A	B	C	2	607	18
451 (See Gross Income Deduction Account No. 609A)						
452 Uncollectible Consumers' Accounts	A	B	C	1	098	65
Other General Expenses			C			
453 Public Utilities Commission Expense	A	B				
~~Insurance Relief and Pension Expense~~ Indirect charges to expenses (a+)		B		3	572	10
454 Injuries and Damages	A				2	96
455 Other Insurance	A				839	81
456 Relief and Pensions	A				671	45
457 Other General Expense	A	B		1	912	97
~~Amount Carried Forward~~ Dup. misc. charges					567	50
Amt. carried forward				4	594	38

NATURAL GAS—OPERATING EXPENSES—(Concluded)
(Entire Company)

	ACCOUNT.	CLASS.			AMOUNT.			
	Amount Brought Forward				4	574	38
	General Adjustments			C				
458	Inventory Adjustments	A	B					
459	Discount on Materials and Supplies	A	B					
460	Utility's Natural Gas Used in Operations	A	B					
461	Free Municipal Natural Gas Service	A	B					
	Maintenance of General Structures		B	C				
462	Maintenance of General Store Structures	A						
463	Maintenance of General Stable Structures	A						
464	Maintenance of General Garage Structures	A						
465	Maintenance of General Shop Structures	A						
466	Maintenance of General Laboratory Structures	A						
467	Maintenance of other General Structures	A						
	Maintenance of General Equipment		B	C				
468	Maintenance of General Store Equipment	A						
469	Maintenance of General Stable Equipment	A						
470	Maintenance of General Garage Equipment	A						
471	Maintenance of General Shop Equipment	A						
472	Maintenance of General Laboratory Equipment	A						
473	Maintenance of General Telephone and Telegraph System	A						
474	Maintenance of other General Equipment	A						
475	Depreciation	A	B	C	53	639	00
476	Extraordinary Depreciation	A	B	C				
477	Amortization of Franchises, Patent Rights and Licenses	A	B	C				
478	Amortization of Natural Gas Rights and Leases Pipe lines	A	B	C	11	708	00
479	Joint Operating Expenses Transferred	A	B	C				
	Total Other General Expenses				69	921	38
	RECAPITULATION OF OPERATING EXPENSES:							
	A. Production Expenses	A	B	C				
	B. Natural Gas Produced by Others	A	B	C	99	164	56
	C. Transmission Expenses	A	B	C				
	D. Distribution Expenses	A	B	C	12	807	01
	E. Utilization Expenses	A	B	C				
	F. Commercial Expenses	A	B	C	10	126	43
	G. New Business Expenses	A	B	C	2	123	75
	H. Administrative Expenses	A	B	C	11	767	11
	I. Other General Expenses	A	B	C	69	921	38
	Grand Total Operating Expenses				206	611	31

ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—NON-OPERATING REVENUE AND EXPENSE ACCOUNTS

ACCOUNT.	CLASS	AMOUNT.	REMARKS.
NON-OPERATING REVENUE ACCOUNTS:			
1. Merchandise Sales	A B C	44 214 69	
2. Jobbing Work Revenue	A B C	5 252 51	
3. Rents from Lease of Public Utility Properties—Page 42	A B C		
4. Rents from Lease of Other Properties—Page 42	A B C		
5. Joint Facility Rent	A B C		
6. Interest from Investment Securities	A B C		
7. Interest from Other Sources	A B C		
8. Dividends on Investment Securities	A B C	441 23	
9. Sinking Fund Revenues	A B C		
10. Depreciation Fund Revenues	A B C		
11. Insurance and Other Reserve Fund Revenues	A B C		
12. Profit from Operations of Others—Page 42	A B C		
13. Sub-Utility Revenues—Page 42	A B C		
14. Oil Revenue	A B C		
15. Gasoline Revenue	A B C		
16. Other Non-Operating Revenues	A B C	4 616 43	
Total Revenues (Carry to page 29)		58 594 86	
NON-OPERATING EXPENSE ACCOUNTS:			
1. Merchandise Sales Expense	A B C	48 263 62	
2. Jobbing Work Expense	A B C	4 044 77	
3. Lease of Public Utility Properties Expense	A B C		
4. Lease of Other Properties Expense	A B C		
5. Interest Expense	A B C		
6. Dividend Expense	A B C		
7. Expense of Procuring Profits from Operations of Others	A B C		
8. Sub-Utility Expense—Page 42	A B C		
9. Non-Operating Taxes	A B C		
10. Uncollectible Non-Operating Revenues	A B C		
11. Oil Expense	A B C		
12. Gasoline Expense	A B C		
13. Other Non-Operating Expense	A B C	2 509 00	
Total Expenses (Carry to page 29)		66 617 39	

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SUB-UTILITY AND OUTSIDE OPERATIONS

If any Public Utility service is conducted other than that of Artificial Gas, Natural Gas or Electric Light, show Revenues and Expenses of such Sub-Utility hereunder.

CLASS OF OPERATION.	GROSS REVENUE	EXPENSE	NET REVENUE OR DEFICIT
None			
TOTAL.			

RENT REVENUES FROM LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

DESCRIPTION OF PROPERTY		Name of present landholder.	Rent accrued during year.
Name.	Location.		
None			
	TOTAL.		

PROFITS AND LOSSES FROM OPERATIONS OF OTHERS

Description of Property Operated.	Location of Property.	Name of operator.	Accrued to Respondent.	
			Profit.	Loss.
None				
		TOTAL.		

TAXES AND ASSESSMENTS

KIND OF TAX	Taxes accrued or accrued during year. Ohio.	Taxes accrued or accrued during year. Indiana.	Taxes paid during year. Ohio.	Taxes paid during year. Indiana.
On the Value of Real and Personal Property Used in Operation	33 260 21		49 915 28	
On Real Property Not Used in Operation	17 22		1 007 98	
On Gross Receipts—Excise Tax	10 189 63		10 189 63	
Public Utilities Commission Maintenance	397 20		397 20	
Domestic Corporation				
Franchises				
Internal Revenue, U. S. Government				
Federal Income and Excess Profits	10 845 14		9 999 95	
Federal on Bond Coupons				
Federal Capital Stock				
Miscellaneous (Specify)				
Total	68 412 16		72 710 04	

REMARKS

Difference between Taxes accrued and Tax expense carried to Acct. No. 29 accounted for in accrual of 1929 Taxes.

RENT DEDUCTIONS FOR LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

Description of Property. NAME.	Name of lessor or reversioner.	Total rent accrued during year.	Classification of Rent. Guaranteed interest on bonds.	Guaranteed dividends on stocks.	Cash.
	None				
	Total,				

ABSTRACTS OF LEASEHOLD CONTRACTS.

Give brief abstracts of the terms and conditions of the leases under which the respondent holds the properties above named, showing particularly (1) the date of the lease, (2) the chain or title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

None

FRANCHISES ACQUIRED DURING THE YEAR.

Name of Original Grantor.	Date of grant.	Term in years.	Territory covered.	Operations covered.	Date of acquisition by respondent.	Date of authorization.	Actual money cost to respondent.	Amount at which carried on Balance Sheet
	1930							
Village of Elida	7/15	25	corp limits	sale gas	same	same		[illegible]
Village of Col. Grove	2/17	25	" "	" "	"	"		"
" " Ottawa	5/15	25	" "	" "	"	"		"
" " Pigeon	3/31	25	" "	" "	"	"		"
" " Bluffton	8/21	25	" "	" "	"	"		"
" " Gaines	10/10	25	" "	" "	"	"		"

If the respondent did not acquire any of the above franchises directly from the original grantor thereof, show the chain of title connecting the original grantor and the respondent.

APPROPRIATIONS OF INCOME AND SURPLUS TO SINKING AND DEPRECIATION RESERVE FUNDS

Name and purpose of sinking or depreciation fund.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL		

APPROPRIATIONS OF INCOME AND SURPLUS FOR INVESTMENT IN FIXED CAPITAL

Name and purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL		

OTHER RESERVE FUND APPROPRIATIONS OF INCOME AND SURPLUS

Purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL		

Here present statements as follows: 1. All Extensions of the Respondent's Business with Other Companies. 2. All Companies from which the Respondent's Business was Withdrawn. 3. All important Purchases of Equipment for new lines. 4. All other important Physical Changes. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Funded Debt issued. 8. All changes in the respondent's holdings of Stocks and Funded Debt. 9. All other important Financial Changes.

Distributing systems were installed in Columbus Grove, Ottawa, Leipsic and Bluffton in accordance with franchises granted as shown on page 44.

Gas is supplied thru a newly constructed gas transmission line running from the plant located at Lima.

CONTRACTS, AGREEMENTS, ETC., WITHIN OHIO.

Here give a concise statement of all Contracts, Agreements, etc., with other Companies or persons, concerning the conduct of the business of the respondent, which became effective during the year covered by this report.

*1. If any gas purchased from other gas companies during year, state:

Name of Company.	Number Cubic Feet	Price per M.	Amount Paid.
The Ohio Fuel Gas Co.	197,481,845	.55¢	108,614.99

2. Number cubic feet gas produced during year: (a) Ohio, 250,984,000
(b) Entire Company,

3. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and Commercial Sales,	361,550,600
(b) Sales to factories and industries,	26,687,200
(c) Public sales (municipalities, etc.)	1,357,300
(d) Miscellaneous gas sales,	
(e) Sales to other gas companies,	7,899,000
Total cubic feet distributed	297,494,100

*4. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.
Delphos Gas Co.	7,899,000	.51¢	4,028.49

5. Number cubic feet gas brought into Ohio, None.

6. Number cubic feet gas sold outside of Ohio, None

7. State kind of gas supplied and process of manufacture, Carburetted water gas produced and mixed with natural gas distributed to customers in Lima, Col. Fr. Ottawa, Lipsic, and Bluffton. other localities furnished with straight natural gas.

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

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1. Number of gas wells owned: (a) Ohio, None.
   (b) Entire Company,
2. Number of gas wells leased and names of lessors, None
3. Number of acres under lease in Ohio at close of year, None
4. If any gas purchased from other companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Paid
The Ohio Fuel Gas Co	180,299,155	.55¢	99,164.56

5. Number cubic feet gas produced during year: (a) Ohio, None
   (b) Entire Company,
6. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and commercial sales,	145,581,100
(b) Sales to factories and industries,	6,554,600
(c) Public sales (municipalities, etc.),	807,300
(d) Miscellaneous gas sales,	
(e) Sales to other gas companies,	
Total cubic feet distributed,	152,943,000

7. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.
None			

8. Number cubic feet gas brought into Ohio, None
9. Number cubic feet gas sold outside of Ohio, None
10. Number of gallons of gasoline produced during year, None
11. Number new wells drilled during year:

	Productive	Non-Productive	Total.
(a) Ohio,	None		
(b) Entire Company,			

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

1. Number of Stations:

2. Capacity of each station in K. W. hours:

(a) A. C.

(b) D. C.

Total capacity

3. Transmission voltage,

4. Distribution voltage,

*5. If any current purchased from other companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount paid.

Not applicable

6. Number of K. W. hours produced during year. (a) Ohio

(b) Entire Company

7. Number of K. W. hours distributed during year in Ohio:

(a) Domestic and commercial sales,

(b) Sales to factories and industries,

(c) Public sales (municipalities, etc.)

(d) Miscellaneous electric sales,

(e) Sales to other electric companies,

Total K. W. hours distributed,

*8 If any current sold to other electric utility companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount Received.

9. Number of meter customers,

10. Number of Flat Rate customers,

11. Is current furnished for light during day time?

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

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STATEMENT OF INTRASTATE GROSS EARNINGS FOR OHIO FOR THE YEAR COVERED BY THIS REPORT

("Intrastate" means from one point in Ohio to another point in Ohio, or wholly within Ohio.)

Attention is called to Section 606 of the General Code of Ohio, which reads as follows:

SEC. 606. For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment appropriated by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.

TO THE PUBLIC UTILITIES COMMISSION OF OHIO:

For the uses and purposes designated in Section 606 of the General Code of Ohio:

We, the undersigned, Emmett R. Gyblin, President,

and F. L. Pringle, asst. Secretary,

of West Ohio Gas Company,
(Full name of respondent.)

on our oath do severally say that the amount of Intrastate Gross Earnings for the State of Ohio, for the year covered by this report, is $775,934.93; that the same has been prepared under our direction from the original books, papers, and records of said company; that we have carefully examined the same, and declare the same to be a complete and correct statement in respect to each and every matter which should be included in Intrastate Gross Earnings, during the period for which said return is made, to the best of our knowledge, information and belief.

(1) corporate seal.

Emmett R. Gyblin
President.

F. L. Pringle
asst. Secretary.

SUBSCRIBED AND SWORN TO before me this 28 day of February, 1931.

H. O. Bailey
Notary Public

(1) Notary seal

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VERIFICATION.

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

OATH.

(To be made by the officer having control of the accounting of the respondent.)

State of Ohio } ss.
County of Allen }

F. L. Pringle (Insert here the name of the affiant.) makes oath and says that he is Asst. Secretary (Insert here the official title of the affiant.)

of West Ohio Gas Co. (Insert here the exact legal title or name of the respondent.)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Public Utilities Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and including Jan. 1, 1930, to and including Dec. 31, 1930

F. L. Pringle
(Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this 28 day of Feb., 1931

My commission expires Aug. 8-1932. [Use an inc. L. S. precision seal] Ontario seal

H. O. Bentley Notary Public
(Signature of officer authorized to administer oaths.)

SUPPLEMENTAL OATH.

(By the president or other chief officer of the respondent.)

State of Ohio } ss.
County of Allen }

Emmett R. Curtin (Insert here the name of the affiant.) makes oath and says that he is President (Insert here the official title of the affiant.)

of West Ohio Gas Co. (Insert here the exact legal title or name of the respondent.)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above named respondent during the period of time from and including Jan 1, 1930, to and including Dec. 31, 1930

Emmitt R. Curtin
(Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this 28 day of Feb., 1931

My commission expires Aug. 8-1932 [Use an inc. L. S. precision seal] Ontario seal

H. O. Bentley
(Signature of officer authorized to administer oaths.)

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ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC LIGHT COMPANIES CLASS A, B and C

Commission Exhibit #4 of March 8, 1933.

ANNUAL REPORT

OF

West Ohio Gas Co.

Lima, Ohio

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31,

19 31

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1ST

INSTRUCTIONS

This form of annual report must be filled out and returned to the office of THE PUBLIC UTILITIES COMMISSION OF OHIO, Columbus, Ohio, by March 1st next.

Heretofore, it has been customary to print on the left hand pages instructions for answering questions covered by the opposite page of the report; but the Commission is of the opinion that this is not necessary, as returns often indicate that instructions have not been read or at least have not been followed, and they are therefore omitted from this form. The respondent, however, is urged to ask for instructions should there be any item in the report that is not fully understood and upon such request any information asked for will be furnished promptly.

This report form calls for Artificial Gas, Natural Gas and Electric Light operations, and any company furnishing more than one of these classes of service will report such information as is applicable for each class.

If it is necessary or desirable to insert additional statements, typewritten or other, in this report, care should be taken that they be legibly made on paper of a durable sort and, as a rule of a size not exceeding that of a page. Inserted sheets should be securely attached, preferably at inner margin.

All entries should be made in a permanent black ink, except those of a contrary or unusual character (like deficits for example), which should be made in a permanent red ink.

Each respondent should make its annual report to this Commission in duplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason two copies of the accompanying form are sent to each company concerned.

The word "respondent," whenever used in this report, means the company in whose behalf the report is made.

Attention is called to the following sections of the General Code of Ohio:

Section 614-2. Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation wherever organized or incorporated:

When engaged in the business of supplying electricity for light, heat or power purposes to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting, power or heating purposes to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating, or power purposes to consumers within this state, is a natural gas company;

Section 614-48. Every public utility shall file with the Commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the Commission. The Commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the Commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the Commission. The Commission may at any time, require specific answers to questions upon which it may desire information.

Section 614-65. Whoever being an officer, agent or employe in an official capacity, of a public utility or railroad defined in this act, knowingly violates any provisions of this act, or wilfully fails, omits, or neglects to obey, observe or comply with any lawful order or direction of the Commission made with respect to any public utility or railroad shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than two years, or both, and each day's continuance of such failure, omission or neglect shall constitute a separate offense.

THE INFORMATION CALLED FOR BY EACH PAGE OF THIS REPORT, UNLESS OTHERWISE INDICATED, IS TO BE REPORTED FOR THE ENTIRE COMPANY AND NOT FOR THE STATE OF OHIO ONLY

DO NOT FAIL TO MAKE RETURNS OF INTRASTATE GROSS EARNINGS ON PAGE 50

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ANNUAL REPORT

OF

West Ohio Gas Co.

Lima, Ohio

TO

The Public Utilities Commission of Ohio

For the Year Ending December 31,

19 31

THIS REPORT MUST BE FILED NOT LATER THAN MARCH 1st

2 HISTORY

1. Exact name of company making this report. West Ohio Gas Co.

2. Date of organization. October 24, 1924

3. Under the laws of what Government, State or Territory organized? If more than one name all. Give reference to each statute and amendments thereof.
State of Ohio

4. If a consolidated or merger company name all constituent and all merged companies. Give reference to charters or general laws governing each, and all amendments of same.
Property of the following Companies purchased by Respondent in December 1924
The Lima Natural Gas Co. The Wapakoneta Natural Gas Co.
The Lima Gas Light Co. The St Marys Gas Co.
The Celina Gas Co.

5. Date and authority for each consolidation and each merger.
On Authority of Orders #3329 and 3330, signed by the Public Utilities Commission of Ohio, Dated November 26th 1924

6. State whether respondent is a corporation, a joint stock association, a firm or partnership, or an individual.
Corporation

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized and the occasion for the reorganization.

8. State whether or not, the respondent during the year conducted any part of its business under a name, or names, other than that shown, in response to inquiry No. 1, above. If so, give full particulars.
No

9. Where is the plant or plants located? Lima, Cridersville, Wapakoneta, St Marys, Celina, Kenton, Delphos, Columbus Grove, Ottawa, Leipsic, Bluffton - Ohio
10. Name below all classes of public service furnished by the respondent:
Production and distribution of gas for domestic, Commercial and Industrial purposes in the above mentioned districts

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DIRECTORS.

NAME.	POST-OFFICE ADDRESS.	DATE OF EXPIRATION OF TERM.
Samuel Insull	122 S Michigan ave. Chicago, Ill.	Directors to serve one year from March 10th 1931 or until such time as successors may be elected
Samuel Insull Jr.	122 S. Michigan ave Chicago, Ill.	
Emmett R. Curtis	Lima, Ohio	
Frank L. Pringle	" "	
Harry O. Bentley	" "	
Samuel E. Mulholland	Ft Wayne, Ind.	
Robert M. Feustel	" "	

PRINCIPAL OFFICERS.

TITLE	NAME	OFFICIAL ADDRESS.
Chairman of the Board,	Samuel Insull Jr.	Chicago, Ill.
President,	Emmett R. Curtis	Lima, Ohio
First Vice-President,	William A. Sawer	Chicago, Ill.
Second Vice-President,		
Third Vice-President,		
Secretary,	Bernard J. Sharon	Chicago, Ill
Treasurer,	George F. Mitchell	" "
General Solicitor,		
Attorney, or General Counsel,	Harry O. Bentley	Lima Ohio
Comptroller,	Frank L. Pringle	" "
Assistant Comptroller,		
General Auditor,		
Assistant General Auditor.		
General Manager,	Emmett R. Curtis	Lima, Ohio
Chief Engineer,		
Superintendent,		
Managing Agent for the Company in Ohio,		

Location of principal office, at Lima County of Allen
and State of Ohio

Officer to whom correspondence concerning this report should be addressed:

NAME.	TITLE.	ADDRESS.
Emmett R. Curtis	President	312 W. Market St. Lima, Ohio

4 FACTS PERTAINING TO CONTROL OF RESPONDENT.

1. Date of last meeting of stockholders for election of directors. March 10, 1931
2. Date of last closing of stock books before end of year for which this report is made. Books do not close
3. Total number of stockholders of record at the date required in answer to Question 2.
4. Has each share of stock one vote? Each share of common stock has one vote.
   If otherwise, explain voting rights.

5. Has any issue of securities contingent voting rights? Yes.
   If so, explain character of such rights. Preferred stock is entitled to vote in event of default in payment of four (4) quarterly dividends
6. Has any issue of securities special privileges in the election of directors? Yes.
   If so, explain character of such privileges. Common Stock holders elect directors

7. Did any individual, association, corporation or corporations, control the respondent at close of year? Yes.

   If control was so held, state: Sole

   (a) The form of control, whether sole or joint;

   (b) The name of the controlling corporation or corporations;
   Midland Utilities Company

   (c) The manner in which control was established;
   Stock Control

   (d) The extent of control; Owns all common stock excepting directors qualifying shares.

   (e) Whether control was direct or indirect;
   Direct

   (f) The name of the intermediary through which control, if indirect, was established.

8. Did any individual, association, or corporation, as trustee, control the respondent at close of year? No
   If control was so held, state:

   (a) The name of the trustee;

   (b) The name of the beneficiary or beneficiaries for whom the trust was maintained.

CORPORATIONS CONTROLLED BY RESPONDENT

NAME.	CONTROL.					
	SOLE OR JOINT.	HOW ESTABLISHED.	EXTENT.	DIRECT OR INDIRECT	IF INDIRECT, NAME OF INTERMEDIARY THROUGH WHICH CONTROL IS ESTABLISHED.	OTHER PARTIES TO AGREEMENT FOR JOINT CONTROL.
ACTIVE CORPORATIONS:			None			
INACTIVE CORPORATIONS:			None			

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6 SPECIAL TRAFFIC AGREEMENTS AND ARRANGEMENTS WITHIN THE STATE OF OHIO.

Give a list showing every agreement, arrangement, or understanding in force at any time during the year, through which agreement, arrangement, or understanding the respondent became obligated or privileged to receive from, or supply to, other corporations or persons, gas, electric energy or property, or to receive or render any service of any class which respondent is obligable or privileged to receive or render, the terms of which agreement differ in any regard whatever from those upon which any person is of common right entitled or bound to supply to, or to receive from, the respondent, gas, electric energy or property, or any service of any kind which respondent is obligable to receive or render. Show for each agreement: (1) the names and addresses of the parties thereto, (2) the date when it became effective, (3) the date when according to its terms it will expire, (4) the consideration upon which it is based, and (5) the amount of business done under it during the year. If there was no such agreement, state that fact.

None

SHOW ARTIFICIAL GAS CUSTOMERS ON THIS PAGE

The respondent will show on this page the names of cities or villages in which it supplies artifical gas, with number of customers in each.

If any public utility product other than that designated by pages 6, 7 and 8, is supplied, name such product on this page, giving names of cities or villages supplied, with number of customers in each.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN	NUMBER OF CUSTOMERS.
		BROUGHT FORWARD.	
		Lima, Ohio	9,152
		Delphos, Ohio	1,071
		Columbus Grove, Ohio	115
		Ottawa, Ohio	169
		Leipsic, Ohio	78
		Bluffton, Ohio	108
FORWARD.		TOTAL.	10,693

8 SHOW NATURAL GAS CUSTOMERS ON THIS PAGE.

The respondent will show on this page the names of cities or villages in which it supplies natural gas, with number of customers in each.
If consumers are supplied outside of cities and villages in rural territory, give name of township with number of customers.

CITY OR TOWN.	NUMBER OF CUSTOMERS.	CITY OR TOWN.	NUMBER OF CUSTOMERS.
		BROUGHT FORWARD,	
		Cridersville, Ohio	116
		Wapakoneta Ohio	1420
		St Marys, Ohio	1326
		Celina, Ohio	1080
		Kenton, Ohio	1814
FORWARD.		TOTAL.	5756

10 GENERAL BALANCE SHEET

ASSET ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. FIXED CAPITAL ACCOUNTS:		
Fixed Capital—Pages 13, 16, 18.	4 091 852 90	
Cost of Fixed Capital purchased		
Construction work in progress		
II. INVESTMENT ACCOUNTS:		
Investment Securities—Page 19.	50 00	
Property Used in Other Public Services—Page 19.		
Advances to Affiliated Companies for Construction, Equipment, or Additions and Betterments—Page 19.		
Other Investments—Page 19.		
III. REACQUIRED SECURITIES ACCOUNTS:		
Reacquired Capital Stock	35 600 00	
Reacquired Bonds		
IV. FUND ACCOUNTS:		
Sinking Fund Assets—Page 20		
Depreciation Fund Assets—Page 20		
Insurance and Other Reserve Fund Assets—Page 20		
V. SPECIAL DEPOSIT ACCOUNTS:		
Interest Special Deposits—Page 21		
Dividend Special Deposits—Page 21		
Other Special Deposits—Page 21	11 923 58	
VI. CURRENT ASSET ACCOUNTS:		
Cash	95 044 62	
Notes Receivable—Page 21	327 40	
Accounts Receivable from Consumers	46 570 42	
Accounts Receivable from Affiliated Companies—Page 21	2 171 22	
Other Accounts Receivable	17 576 15	
Matured Interest and Rents Receivable		
Materials and Supplies	35 053 29	
Subscriptions to Capital Stock		
Other Current Assets	25 000 00	
VII. ACCRUED ASSET ACCOUNT:		
Unmatured Interest and Rents Receivable		
VIII. PREPAID ACCOUNTS:		
Prepaid Insurance	536 21	
Prepaid Interest		
Prepaid Taxes		
Other Prepaid Accounts	547 18	
IX. DEFERRED CHARGE ACCOUNTS:		
Discount on Capital Stock	89 650 87	
Unamortized Debt Discount and Expense	103 199 58	
Property Abandonment—Page 22		
Extraordinary Casualties		
Non-Productive Well Drilling Expense		
Preliminary Survey and Investigation Charges		
Other Deferred Charges	57 798 33	
Grand Total	4 612 261 75	

GENERAL BALANCE SHEET

LIABILITY ACCOUNTS

ACCOUNT.	ITEM.	TOTAL.
I. CORPORATE CAPITAL LIABILITY ACCOUNTS:		
Capital Stock—Page 23	2 466 381 30	
Installments Paid on Capital Stock Subscriptions		
Stock Liability for Conversion of Securities		
Premium on Capital Stock		
II. NON-CORPORATE PROPRIETORSHIP ACCOUNTS:		
Sole Proprietorship		
Partnership		
III. FUNDED DEBT ACCOUNTS—Page 23.		
Bonds	1 353 000 00	
Real Estate Mortgages		
Advances from Affiliated Companies for Construction Equipment, or Additions and Betterments		
Other Funded Debt		
IV. CURRENT LIABILITY ACCOUNTS:		
Receiver's Certificates		
Judgments		
Workmen's Compensation		
Notes Payable—Page 25	197 316 32	
Consumer's Deposits	47 960 38	
Accounts Payable to Affiliated Companies—Page 25	8 859 33	
Other Accounts Payable	53 996 08	
Matured Funded Debt—Page 25		
Matured Interest on Funded Debt		
Matured Interest on Unfunded Debt		
Dividends Payable	31 440 00	
Service Billed in Advance		
Capital Stock Subscribed		
Other Current Liabilities	725 16	
V. ACCRUED LIABILITY ACCOUNTS:		
Unmatured Interest Accrued on Funded Debt	6 500 00	
Unmatured Interest Accrued on Unfunded Debt		
Taxes Accrued	42 009 40	
Other Accrued Liabilities		
VI. DEFERRED CREDIT ACCOUNTS:		
Unamortized Premium on Debt		
Other Deferred Credits		
Public Improvement Assessments	1 449 93	
VII. RESERVE ACCOUNTS:		
Insurance Reserve—Page 26		
Injuries and Damages Reserve—Page 26	1 992 09	
Uncollectible Consumers' Accounts Reserve—Page 26	4 498 80	
Depreciation of Structures and Equipment Reserve—Page 25	246 101 33	
Amortization of Other Capital Reserve—Page 26 Pipe Lines	81 665 54	
Other Reserves—Page 26		
Contributions for Extensions	964 31	
VIII. APPROPRIATED SURPLUS ACCOUNTS:		
Surplus Invested in Fixed Capital		
Funded Debt Retired through Surplus		
Surplus Reserved for Sinking Funds		
Other Surplus Reserves		
IX. UNAPPROPRIATED SURPLUS ACCOUNT:		
Corporate Surplus Unappropriated* Credit	67 601 83	
Grand Total	4 612 261 75	

*Insert "Debit" or "Credit" as may be appropriate, showing the amount of debit in red.

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS

ACCOUNT.	Balance at beginning of year	Charges for Capital added during year.	Credits made to sub-account during year.	Balance at close of year.
INTANGIBLE FIXED CAPITAL:				
1. Organization				
2. Franchises				
3. Miscellaneous intangible capital				
TANGIBLE FIXED CAPITAL:				
4. Land:				
(a) Land occupied by gas works	4 834 97	4 500 00		9 334 97
(b) Land occupied by outside holder stations				
(c) Rights of way				
(d) Water rights				
(e) General office land				
(f) Miscellaneous land devoted to gas operations				
5. Structures:				
(a) Works and station structures		9 999 00		9 999 00
(b) Holders		5 750 00		5 750 00
(c) General office structures				
(d) Miscellaneous structures devoted to gas operations	24 381 91	112 20	501 49	23 992 62
6. Boiler plant equipment	1 743 80			1 743 80
7. Steam engines				
8. Internal combustion engines				
9. Accessory power equipment				
10. Benches and retorts		19 150 00		19 150 00
11. Water gas sets	43 358 05			43 358 05
12. Purification apparatus				
13. Accessory works equipment	3 170 24	1 983 17	2 296 47	2 856 94
14. Mains				
15. Services				
16. Consumers' meters				
17. Consumers' Meter installation				
18. Street lighting equipment				
19. Gas appliances				
	77 488 97	41 484 37	2 797 96	116 181 78

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	77 438 37	41 491 37	2 797 96	116 181 78

FIXED CAPITAL ACCOUNT—ARTIFICIAL GAS—(Continued)

ACCOUNT	Balance at beginning of year.	Charges for capital added during year.	Credits made to sub-account during year.	Balance at close of year.
20. General equipment:				
(a) General office equipment				
(b) Shop equipment				
(c) Stores equipment				
(d) Transportation equipment				
(e) Telephone, telegraph and wireless system				
(f) Laboratory equipment				
(g) Miscellaneous equipment				
21. Miscellaneous tangible capital				
22. Engineering and superintendence during construction				
23. Law expenditures during construction				
24. Injuries and damages during construction				
25. Taxes during construction				
26. Interest during construction				
27. Miscellaneous construction expenditures				
28. Fixed capital not classified by prescribed accounts				
29. Cost of plant and equipment purchased				
30. Unfinished Plant Investment (construction work in progress)				
Represents the value of additions since Dec. 1st, 1924 to structures and equipment devoted to production of artificial gas.				
All transmission and distribution line general equipment and structures added to plant and property account since Dec. 1st, 1924 shown under schedule for natural gas pages 15 and 16.				
Total	77 438 37	41 491 37	2 797 96	116 181 78

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14 THIS PAGE FOR NATURAL GAS COMPANIES

FIXED CAPITAL INSTALLED PRIOR TO ~~JANUARY 1, 1921~~ Dec. 1, 1924

Give particulars of the credits made during the year in the accounts of the respondent representing its plant and equipment installed in service prior to January 1, 1921.

If the respondent's classification of fixed capital accounts in conformity with the principles embodied in the account for Fixed Capital Installed since December 31, 1920, became effective at an earlier date, the dates in the headings of the present schedule and the following schedule may be correspondingly modified.

Names of subaccounts shown in column (a) should be those carried on the respondent's books of account immediately prior to the adoption of the Uniform System of Accounts for Natural Gas Companies or its equivalent.

If the respondent's accounts representing plant and equipment installed prior to January 1, 1921, have been reclassified in accordance with the rules governing accounts for fixed capital installed since December 31, 1920, there may be shown in column (a) the names of accounts now carried on respondent's books representing such plant and equipment instead of those carried prior to the adoption of the Uniform System of Accounts for Natural Gas Companies.

In connection with the credits called for in column (c) of this schedule and column (d) of schedule on page 15, see paragraph 2, page 18, of the Uniform System of Accounts for Natural Gas Companies.

NAMES OF ACCOUNTS KEPT PRIOR TO JANUARY 1, 1921. (a)	Balance at beginning of year. (b)	Credits made to sub-accounts during year. (c)	Balance at close of year. (d)
Plant and Property Purchased	3 088 776 71	4 974 64	3 083 802 07
Represents balance of original cost of plant and property purchased Dec 1st 1924.			
Total	3 088 776 71	4 974 64	3 083 802.07

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FIXED CAPITAL INSTALLED SINCE ... NATURAL GAS

FIXED CAPITAL INSTALLED SINCE DECEMBER 31, 1939—NATURAL GAS

ACCOUNT. (a)	Balance at beginning of year. (b)	Charges for capital added during year. (c)	Credits made to sub-account during year. (d)	Balance at close of year. (e)
I. UNDISTRIBUTED FIXED CAPITAL ACCOUNTS:				
200 Organization	30 822 23	425 00		31 247 23
201 Franchises				
202 Patent Rights and Licenses				
203 Other Undistributed Fixed Capital		6 510 70		6 510 70
II. PRODUCTION SYSTEM PROPERTY ACCOUNTS:				
204 Land				
205 Leaseholds				
206 Rights of Way				
207 Natural Gas Rights				
208 Gas Well Structures				
209 Field Measuring Station Structures				
210 Other Production System Structures				
211 Gas Well Construction				
212 Gas Well Equipment				
213 Field Line Construction				
214 Field Line Equipment				
215 Field Measuring Station Equipment				
216 Drilling and Cleaning Equipment				
217 Other Production System Equipment				
III. TRANSMISSION SYSTEM PROPERTY ACCOUNTS:				
218 Land	1 368 14	303 50		1 671 64
219 Leaseholds	1 299 50	16 50		1 316 00
220 Rights of Way	2 002 45			2 002 45
221 Compressing Station Structures				
222 Transmission System Measuring Station Structures	3 691 54			3 691 54
223 Other Transmission System Structures		145 397 89		145 397 89
224 Compressing Station Equipment				
225 Transmission System Measuring Station Equipment	5 569 70			5 569 70
226 Transmission Line Equipment				
227 Other Transmission System Equipment				
IV. DISTRIBUTION SYSTEM PROPERTY ACCOUNTS:				
228 Land				
229 Leaseholds				
230 Rights of Way				
231 District Regulator Structures	2 790 04			2 790 04
232 Other Distribution System Structures				
233 Gas Receivers and District Regulators	1 896 47			1 896 47
234 Distribution Line Equipment	179 757 35	157 607 96	208 82	337 156 49
235 Service Line Equipment	42 560 15	58 494 38	69 18	100 985 35
236 Meters	29 256 11	4 029 68		33 285 79
237 Meter Installation	10 577 74	3 033 07		13 611 81
238 House Regulators	3 293 65	2 634 39		5 928 04
239 Other Distribution System Equipment				

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ACCOUNT. (a)	Balance at beginning of year. (b)	Charges for capital added during year. (c)	Credits made to retirement during year. (d)	Balance at close of year. (e)
V. UTILIZATION SYSTEM PROPERTY ACCOUNTS:				
240 Commercial Lighting System				
241 Municipal Street Lighting System				
242 Private Street Lighting System				
243 Other Utilization Equipment				
VI. GENERAL PROPERTY ACCOUNTS:				
244 General Office Land	50 000 00	5 535 00		55 635 00
245 Other General Land				
246 Leaseholds				
247 General Office Structures	102 633 03			102 633 03
248 Other General Structures				
249 General Office Equipment	19 159 91	3 225 80	125 00	22 259 71
250 General Store Equipment				
251 General Shop Equipment				
252 General Stable Equipment				
253 General Garage Equipment	8 890 73	2 738 27	3 275 75	8 353 25
254 General Laboratory Equipment				
255 General Telephone and Telegraph System				
256 General Tools and Implements				
257 Other General Equipment	3 349 48	191 80		3 541 28
VII. UNDISTRIBUTED CONSTRUCTION EXPENDITURE ACCOUNTS:				
258 Engineering and Superintendence during construction				
259 General Officers' and Clerks' salaries during construction				
260 General Officers' and Clerks' expenses during construction				
261 Office Supplies and Expenses during construction				
262 Law Expenditures during construction				
263 Injuries and Damages during construction				
264 Insurance during construction — Construction in Progress	238 228 22		232 743 55	5 484 67
265 Taxes during construction	950 02			950 02
266 Interest during construction				
267 Other Expenditures during construction	71 00			71 00
Total	738 147 46	390 143 89	236 422 30	891 869 05
SUMMARY OF FIXED CAPITAL:				
Installed Prior to January 1, 1921 — December 1st 1924	3 088 776 71	.....	4 774 64	3 083 802 07
Installed Since December 31, 1920 — December 1st 1924	738 147 46	390 143 89	236 422 30	891 869 05
Credit for finished construction closed to primary fixed capital account.				
Total	3 826 924 17	390 143 89	241 196 94	3 975 671 12

INVESTMENT SECURITIES

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INVESTMENT SECURITIES

NAME OF ISSUING COMPANY AND DESCRIPTION OF SECURITY HELD.	PLEDGED.		UNPLEDGED.		INCOME DERIVED			Extent of control, if control exists.
	Par value.	Book value.	Par value.	Book value.	Rate.	Amount of dividends.	Amount of interest.	
Investment of Affiliated Companies:			None					
Investment of Non-Affiliated Companies:			None					
Other Investments:								
One share no par Stock of The Lima Gasoline Co.		50 00			20	10 00		
Total		50 00				10 00		

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FUND ACCOUNTS

NAME OF FUND.	Par value.	Book value.	Balance in Fund at beginning of year.	Additions to Fund During Year.	Withdrawals from Fund During Year.	Balance in Fund at close of year.
Sinking Fund Assets.		None				
Depreciation Fund Assets:		None				
Insurance and Other Reserve Fund Assets:		None				

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CASH AND SPECIAL DEPOSITS

Name of depositary.	Purpose of Deposit	Amount at close of year
The Lima First American Trust Co. Lima O.	Operation	90 476 07
Peoples National Bank, Wapakoneta O	"	77 48
First National Bank, St Marys, O.	"	62 81
The Commercial Bank Co, Celina O.	"	38 36
The First Commercial National Bank, Kenton Ohio	"	151 79
The Bank of Ottawa, Ottawa, Ohio	"	178 65
The Bank of Leipsic, Leipsic, Ohio	"	127 53
Citizens National Bank, Bluffton, O	"	167 79
Old National Bank, Delphos O.	"	2 992 15
The Lima First American Trust Co, Payroll Fund	"	200 00
Petty cash Funds, Local offices	"	1 070 00
The Lima First American Trust Co.	Lima Ohio Amt. deposited in connection with authentication	
Haley, Stewart Co. Chicago, Ill.	Supplemental bond issue	10 543 58
	To Cover 2% Nominal Tax on Bondholders interest	780 00
	Total	106 382 20

NOTES AND ACCOUNTS RECEIVABLE

Bills Receivable.		*Miscellaneous Accounts Receivable.	
Name of debtor	Amount at close of year	Name of debtor	Amount at close of year
Carl Lange	183 86	Accts Rec. Gas Customers	46 570 42
Charles Werts	193 55	" " Mercantile	16 864 42
		" " Miscellaneous	651 73
Total	327 40	Total	64 086 57

ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES

Name of debtor.	Character of transaction	Amount at close of year
Board of Trustees Service Annuity Fund	Fund, Adjustment of Amount Paid the fund	2171 22
	Total	2 171 22

*Show principal items only. Minor items may be reported in one group.

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PROPERTY ABANDONED

Items.	Year of Abandonment	Balance in Account at beginning of year	Amount Charged to Account during year	Amount Credited to Account during year	Balance in Account at close of year
		None			
Total					

REMARKS

CAPITAL STOCK.

CLASS OF STOCK.	NUMBER OF SHARES AUTHORIZED.	PAR VALUE OF ONE SHARE.	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION.	DIVIDENDS DECLARED DURING YEAR. Rate	DIVIDENDS DECLARED DURING YEAR. AMOUNT.
Common	78 600	no Par		1716 381 30			1716 381 30		62 160 00
Preferred	12 800	$100	1 280 000	750 000 00	35 600 00		714 400 00	7	50 354 50
TOTAL				2466 381 30	35 600 00		2430 781 30		

FUNDED DEBT.

DESIGNATION OF KIND OF OBLIGATION.	TERM. Date of Issue	TERM. Date Maturity	TOTAL PAR VALUE AUTHORIZED*	TOTAL PAR VALUE OUTSTANDING.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN TREASURY.	TOTAL PAR VALUE HELD BY RESPONDENT CORPORATION. IN SINKING OR OTHER FUNDS.	TOTAL PAR VALUE NOT HELD BY RESPONDENT CORPORATION	INTEREST. Rate	INTEREST. When Payable.	INTEREST. AMOUNT ACCRUED DURING YEAR.	INTEREST. AMOUNT PAID DURING YEAR.
First and refunding Mortgage 6% Bonds	Dec 1 1928	Dec-1 1954	1 300 000	1 300 000			1 300 000	6	June-1 and Dec-1	65 460 00	64 180 00
First Mortgage Bonds	Apr 1 1916	Apr 1 1936	53 000	53 000			53 000	6	June-1 and Quarterly	530 00	590 00
TOTAL			1 353 000	1 353 000			1 353 000			66 180 00	64 680 00

*Purpose for which issue was authorized. Increase in common stock and First and Refunding Mortgage Bonds authorized by Public Utilities Commission order #7009 dated July 28-1931 for the purpose of reimbursing the treasury account of expenditures for fixed Capital

Receipts Outstanding at the close of the year for installments received on subscriptions for stocks were as follows:

Common stock, $; Second preferred stock, $; First preferred stock, $; Debenture stock, $; All classes, $

First Mortgage bonds represent the funded indebtedness of the Delphos Gas Company assumed by this Company in connection with the purchase of the Physical Capital. Purchase of this property was consummated on October 31-1931 in accordance with P.U.C. order #7011 dated October 16-1931

1080

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SECURITY FOR FUNDED DEBT.

DESIGNATION OF BOND OR OBLIGATION	PROPERTY MORTGAGED AND SECURITIES PLEDGED. DESCRIPTION.	VALUE.	REMARKS.
First and Refunding mortgage bonds	Entire property	4,091,852.90	

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SUNDRY CURRENT LIABILITIES

NAME OF CREDITOR OR OBLIGATION.	CHARACTER OF TRANSACTIONS INVOLVED.	Credit balance at close of year.
Midland Utilities Co	Notes Payable Advance for construction	197 316 32
	Total.	197 316 32
Trustees of Insurance Midland State Treasurer Co. Midland Utilities Co. of Indiana Midland Printing Co. Midland United Co.	Accounts Payable to Affiliated Companies Insurance Premiums Services Rendered Supplies Furnished Interest on Loans Services Rendered	93 10 629 37 06 935 82 7769 06
	Total.	8 869 33
	Matured Funded Debt None	
	Total.	

DEPRECIATION OF STRUCTURES AND EQUIPMENT RESERVE

DEBIT ITEMS.		CREDIT ITEMS.	
Retirements During the Year	14 126 69	Balance at Beginning of Year	286 884 52
Other Debits:		Amount Reserved During the Year by Charges to Operating Expenses	98 342 50
		Other Credits:	
Balance at Close of Year	146 181 83		
Total.	290 128 02	Total.	290 226 02

BASIS FOR DEPRECIATION RESERVE.

Explain here in detail the basis upon which the charge to operating expenses on account of depreciation is founded and also the method by which the amount in question was derived. The amount here shown will be the same as that carried to "Depreciation of Structures and Equipment Reserve" on the General Balance Sheet.

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RESERVES

DEBIT ITEMS		CREDIT ITEMS	
INSURANCE RESERVES			
		Balance at Beginning of Year	
		Amount Reserved During the Year by Charges to Operating Expenses	
		Other Credits	
Balance at Close of Year			
Total		Total	
INJURIES AND DAMAGES RESERVE			
Charges Acct minor accidents and damages	109 00	Balance at Beginning of Year	2 051 04
		Amount Reserved During the Year by Charges to Operating Expenses	
		Other Credits:	
Balance at Close of Year	1 942 04		
Total	2 051 04	Total	2 051 04
UNCOLLECTIBLE CONSUMERS' ACCOUNTS RESERVE			
Worthless bills charged off	3 736 67	Balance at Beginning of Year	4 212 82
Adjustment of 1930 Reserve	476 15	Amount Reserved During the Year by Charges to Operating Expenses	3 733 36
		Other Credits:	56 42
Balance at Close of Year	4 488 80		
Total	8 711 62	Total	8 711 62
AMORTIZATION OF ~~OTHER CAPITAL~~ RESERVE Pipe Lines			
		Balance at Beginning of Year	75 88 54
		Amount Reserved During the Year by Charges to Operating Expenses	5 854 00
		Other Credits:	
Balance at Close of Year	81 665 54		
Total	81 665 54	Total	81 665 54
OTHER RESERVES			
		Balance at Beginning of Year	
		Amount Reserved During the Year by Charges to Operating Expenses	
		Other Credits:	
Balance at Close of Year			
Total		Total	

MEMORANDUM

Use this page for an explanation of any item contained in this report where sufficient space is not available.

CORPORATE SURPLUS UNAPPROPRIATED

ITEM	DEBITS	CREDITS	REMARKS
CREDITS:			
Credit balance at beginning of year		55 031 18	Credit of $29090 represents adjustment of Federal Income Tax liability for prior years.
Credit balance transferred from Income Account		1 067 58	
Uncollectible Consumers' Accounts recovered			
Uncollectible Non-Operating Revenues recovered			
Other Additions to Surplus		20 000 00	Debit of $9,148.08 represents the following prior years expenses charged direct to surplus
Miscellaneous Credits		651 15	1. Annual report and audit
DEBITS:			2. Contribution to Community Fund
Debit balance at beginning of year			3. Income Tax Audit
Debit balance transferred from Income Account			
Surplus Appropriated for Sinking Funds			
Surplus Appropriated for Other Reserve Funds			
Surplus Appropriated for Dividends—Page 28			
Surplus Appropriated for Investment in Fixed Capital			
Gifts to Affiliated Companies			
Expenses unprovided for elsewhere			
Amortization unprovided for elsewhere			
Other Appropriations of Surplus			
Other Deductions from Surplus			
Uncollectible Consumers' Accounts—Old Year			
Uncollectible Non-Operating Revenues—Old Year			
Miscellaneous Debits	9 148 08		
Balance carried forward to Balance Sheet	67 601 83		
Total	76 749 91	76 749 91	

DIVIDENDS DECLARED DURING THE YEAR

NAME OF SECURITY ON WHICH DIVIDEND WAS DECLARED	Rate Per Cent. Regular.	Rate Per Cent. Extra.	Par value of amount on which dividend was declared.	*Amount of dividend.	Date Declared.	Date Payable.
Dividends Charged to Income:						
Class A Preferred Stock - Quarterly	1¾		300 000 00	5250 00	1/26/31	2/6/31
" B " " "	"		450 000 00	7875 00	1/26/31	2/6/31
" " " " "	"		750 000 00	13 125 00	4/29/31	6/1/31
" " " " "	"		750 000 00	13 125 00	7/27/31	8/1/31
" " " " "	"		750 000 00	13 125 00	11/4/31	12/1/31
Common Stock - 20¢ per share			75 000 shares	15 000 00	7/27/31	9/21/31
" " 20¢ " "			78 600 shares	15 720 00	11/4/31	11/20/31
" " 40¢ " "			78 600 shares	31 440 00	12/29/31	1/2/32
Total Charged to Income				114 660 00		
Dividends Charged to Surplus:						
Difference between dividends declared as herein shown and dividends charged to income page 29 represents dividends applicable to reacquired stock held by the company						
Total Charged to Surplus:						
Grand Total				114 660 00		

*Total of this column should correspond with like item on page 23.

INCOME ACCOUNT
(Entire Company)

ACCOUNT.	AMOUNT	REMARKS
I. OPERATING INCOME:		
1. Operating Revenues—Page 30	701 380 41	
2. Operating Expenses—Pages 32-36-40	450 985 04	
3. *Net Operating Revenue	250 395 37	
II. NON-OPERATING REVENUES AND EXPENSES		
4. Revenues—Page 41	44 259 12	
5. Expenses—Page 41	37 424 77	
6. *Net Non-Operating Revenue	6765 65	
7. *Total Net Operating Income (Total Items 3 & 6)	249 229 72	
8. Taxes Assignable to Operations—Page 43	45 167 58	
9. *Gross Income (Item 7 less Item 8)	204 062 14	
III. GROSS INCOME DEDUCTIONS.		
10. Rent for Lease of Public Utility Properties—Page 44		
11. Joint Facility Rent		
12. Other Rent Deductions		
13. Interest Accrued on Funded Debt—Page 23	66 180 00	
14. Interest Accrued on Unfunded Debt	19 629 90	
15. Guaranties of Periodic Payments		
16. Loss on Operations of Others		
17. Other Contractual Deductions from Income		
18. Amortization of Debt Discount and Expense	4 105 35	
19. Amortization of Interests in Landed Capital		
20. Other Deductions from Income	564 80	
21. Amortization of Premium on Debt		
22. Total Deductions from Gross Income	88 480 06	
23. *Net Income (Item 9 less Item 22)	115 582 08	
IV. NET INCOME APPROPRIATIONS		
24. Net Income Appropriated for Sinking Funds—Page 45		
25. Net Income Appropriated for Depreciation Reserve Fund—Page 45		
26. Net Income Appropriated for Other Reserve Funds—Page 45		
27. Net Income Appropriated for Dividends—Page 28	112 514 50	
28. Net Income Appropriated for Investment in Fixed Capital—Page 45		
29. Total Appropriations of Income	112 514 50	
30. *Balance transferred to surplus—Page 28 (Item 23 less Item 29)	1 067 58	

31. The operating revenues and expenses above stated relate to the period beginning June 1st, 1921, and ending Dec. 31st, 193[illegible]

*If deficit, in Red.

30 ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—OPERATING REVENUES

ACCOUNT.	CLASS.	AMOUNT.	REMARKS.
ARTIFICIAL GAS REVENUES:			
1. Metered Domestic and Commercial Sales	A B C	452 299 11	
2. Metered Industrial Sales	A B C	12 951 60	
3. Metered Sales for Municipal Street Lighting	A B C		
4. Metered Sales for Other Municipal Purposes	A B C	1 760 19	
5. Metered Sales to Other Gas Utilities	A B C	13 247 15	
6. Flat-Rate Sales to General Consumers	A B C		
7. Flat-Rate Sales for Municipal Street Lighting	A B C		
8. Flat-Rate Sales for Other Municipal Purposes	A B C		
9. Prepaid Gas Sales	A B C		
10. Commissions on Others' Gas	A B C		
11. Consumers' Discounts Forfeited and Penalties Imposed	A B C	4 327 07	
Total Artificial Gas Revenues		484 585 12	
NATURAL GAS REVENUES:			
1. Metered Private Sales	C		
2. Metered Domestic and Commercial Sales	A B	200 374 25	
3. Metered Industrial Sales	A B	4 962 54	
4. Other Metered Private Sales	A B		
5. Metered Sales of Other Natural Gas Utilities	C		
6. Metered Sales to Affiliated Natural Gas Utilities	A B		
7. Metered Sales to Non-affiliated Natural Gas Utilities	A B		
8. Metered Public Sales	A B C	899 10	
9. Unmetered Private Sales	C		
10. Unmetered Domestic and Commercial Sales	A B		
11. Unmetered Industrial Sales	A B		
12. Unmetered Sales for Lighting Private Streets	A B		
13. Other Unmetered Private Sales	A B		
14. Unmetered Sales to Other Natural Gas Utilities	C		
15. Unmetered Sales to Affiliated Natural Gas Utilities	A B		
16. Unmetered Sales to Non-affiliated Natural Gas Utilities	A B		
17. Unmetered Public Sales	C		
18. Unmetered Sales for Municipal Street Lighting	A B		
19. Unmetered Sales for Other Municipal Uses	A B		
20. Consumers' Discounts Forfeited and Penalties Imposed	A B C	379 40	
21. Allowances to Consumers	A B C		
Total Natural Gas Revenues		206 795 29	
ELECTRIC REVENUES:			
1. Municipal Light and Power Revenues	C		
2. Municipal Street Lighting—Arc	A B		
3. Municipal Street Lighting—Incandescent	A B		
4. Other Municipal Light and Power Revenues—Metered	A B		
5. Other Municipal Light and Power Revenues—Flat-Rate	A B		
6. Private Light and Power Revenues	C		
7. Residence Light and Power Revenues—Metered	A B		
8. Residence Light and Power Revenues—Flat-Rate	A B		
9. Commercial Light and Power Revenues—Metered	A B		
10. Commercial Light and Power Revenues—Flat-Rate	A B		
11. Miscellaneous Electric Revenues	C		
12. Sales to Other Public Utilities	A B		
13. Other Miscellaneous Electric Revenues	A B		
Total Electric Revenues			
Grand Total Operating Revenues		701 380 41	

OPERATING EXPENSES — ARTIFICIAL GAS
(Entire Company)

ACCOUNT.	AMOUNT.
I. PRODUCTION EXPENSES:	
1. Works Superintendence,	1 800 00
2. Works Labor,	4 065 61
3. ~~Coal~~ Other Fuel,	
4. Water,	
5. Fuel Under Retorts,	
6. Coal Carbonized,	
7. ~~Coal-Gas Enrichers~~, Duplicate Production Charges	211 27
8. Generator Fuel,	27 535 15
9. ~~Water-Gas Oil~~, Holder/Tank Adjustment	34 70
10. Purifying Supplies, Steam Generation Apportionment Account	15 057 32
11. Miscellaneous Works Expense,	1 064 14
12. Gas Storage,	956 93
13. Gas from Other Sources, Natural Gas Purchased	195 396 30
14. Works and Station Structures — Maintenance,	657 63
15. Power-Plant Equipment — Maintenance,	90 58
16. Gas Apparatus — Maintenance,	2 687 48
17. Works Tools — Maintenance, Holders	277 61
TOTAL PRODUCTION EXPENSES,	244 459 98
II. TRANSMISSION AND DISTRIBUTION EXPENSES: Duplicate Charges (Credit)	387 46
18. Transmission Pumping,	7 962 06
19. Distribution Superintendence,	10 256 18
20. Distribution Supplies and Expenses, and Operating Labor	8 138 94
21. Gas Meter and Installation Work,	5 184 27
22. Work on Consumers' Premises,	7 359 63
23. Gas Mains and Services — Maintenance,	11 270 24
24. Gas Meters — Maintenance,	6 272 97
25. Distribution Tools — Maintenance, and Shop Buildings and Accessories	561 89
26. Gas Appliances — Maintenance,	3 348 12
TOTAL TRANSMISSION AND DISTRIBUTION EXPENSES,	59 990 04
III. STREET AND PARK LIGHTING EXPENSES:	
27. Street Lamp Operation,	
28. Street Lamps — Maintenance,	
TOTAL STREET AND PARK LIGHTING EXPENSES,	
IV. COMMERCIAL EXPENSES:	
29. Commercial Administration, and Commercial Labor	2590 43
30. Advertising,	
31. Other Commercial Expenses,	1 180 94
TOTAL COMMERCIAL EXPENSES,	3 771 37

32 OPERATING EXPENSES—ARTIFICIAL GAS—(Concluded.)
(Entire Company)

ACCOUNT.	AMOUNT.
V. NEW BUSINESS EXPENSES:	
32. New business salaries — management salaries	1 985 44
33. New business supplies and expenses — demonstration labor & expense	1 950 96
34. Advertising supplies and expenses	1 484 17
35. Canvassing and soliciting	12 028 00
36. Miscellaneous new business supplies and expenses	891 06
Total New Business Expenses	18 309 43
VI. GENERAL AND MISCELLANEOUS EXPENSES:	
37. Salaries and expenses of general officers	11 389 82
38. Salaries and expenses of general office clerks	11 005 89
39. General office supplies and expenses	1 931 49
40. General law expenses	5961 88
41. Miscellaneous general expenses	11 329 68
42. Insurance	4 239 62
43. Relief department and pensions	1 355 21
44. ~~Gas franchise requirements~~ — Duplicate charges (Cr.)	1 531 48
45. Uncollectible Consumers' Accounts	3 258 42
46. ~~Residuals expenses~~ — General advertising	1 221 54
47. General amortization — And depreciation	32 673 50
48. Injuries to persons and property	
49. Stationery and printing	1 214 47
50. ~~Store expenses~~ — contributions and association dues	2 902 29
51. ~~Stable expenses~~ — Indirect charges to construction (Cr.)	3 749 95
52. Miscellaneous adjustments—Balance	218 09
53. General structures—Maintenance	395 48
Total General and Miscellaneous Expenses	89 161 22
Recapitulation of Operating Expenses:	
I. Production	249 459 98
II. Transmission and Distribution	59 990 04
III. Street and Park Lighting	
IV. Commercial	24 084 91
V. New Business	18 309 43
VI. General and Miscellaneous	89 161 22
	450 985 04

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ARTIFICIAL GAS, NATURAL GAS AND ELECTRIC—NON-OPERATING REVENUE AND EXPENSE ACCOUNTS

ACCOUNT.	CLASS.	AMOUNT.	REMARKS.
NON-OPERATING REVENUE ACCOUNTS:			
1. Merchandise Sales	A B C	36 509 90	
2. Jobbing Work Revenue	A B C	2 894 77	
3. Rents from Lease of Public Utility Properties—Page 42	A B C		
4. Rents from Lease of Other Properties—Page 42	A B C		
5. Joint Facility Rent	A B C		
6. Interest from Investment Securities	A B C		
7. Interest from Other Sources	A B C		
8. Dividends on Investment Securities	A B C	10 00	
9. Sinking Fund Revenues	A B C		
10. Depreciation Fund Revenues	A B C		
11. Insurance and Other Reserve Fund Revenues	A B C		
12. Profit from Operations of Others—Page 42	A B C		
13. Sub-Utility Revenues—Page 42	A B C		
14. Oil Revenue	A B C		
15. Gasoline Revenue	A B C		
16. Other Non-Operating Revenues	A B C	4 844 45	
Total Revenues (Carry to page 29)		44 258 12	
NON-OPERATING EXPENSE ACCOUNTS:			
1. Merchandise Sales Expense	A B C	42 079 90	
2. Jobbing Work Expense	A B C	2 341 87	
3. Lease of Public Utility Properties Expense	A B C		
4. Lease of Other Properties Expense	A B C		
5. Interest Expense	A B C		
6. Dividend Expense	A B C		
7. Expense of Procuring Profits from Operations of Others	A B C		
8. Sub-Utility Expense—Page 42	A B C		
9. Non-Operating Taxes	A B C		
10. Uncollectible Non-Operating Revenues	A B C		
11. Oil Expense	A B C		
12. Gasoline Expense	A B C		
13. Other Non-Operating Expense	A B C	3 003 00	
Total Expenses (Carry to page 29)		47 424 77	

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SUB-UTILITY AND OUTSIDE OPERATIONS

If any Public Utility service is conducted other than that of Artificial Gas, Natural Gas or Electric Light, show Revenues and Expenses of such Sub-Utility hereunder.

CLASS OF OPERATION.	GROSS REVENUE	EXPENSE	NET REVENUE OR DEFICIT
None			
TOTAL,			

RENT REVENUES FROM LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

DESCRIPTION OF PROPERTY		Name of present leaseholder.	Rent accrued during year.
Name.	Location.		
None			
	TOTAL,		

PROFITS AND LOSSES FROM OPERATIONS OF OTHERS

Description of Property Operated.	Location of Property.	Name of operator.	Accrued to Respondent.	
			Profit.	Loss.
None				
		TOTAL,		

TAXES AND ASSESSMENTS

KIND OF TAX.	Taxes assessed or accrued during year.		Taxes paid during year.	
	Ohio.	Kentucky.	Ohio.	Kentucky.
On the Value of Real and Personal Property Used in Operation	34380 02		19 036 02	
On Real Property Not Used in Operation				
On Gross Receipts—Excise Tax	10 380 94		11 008 49	
Public Utilities Commission Maintenance	426 62		426 62	
Domestic Corporation				
Franchises				
Internal Revenue, U. S. Government				
Federal Income and Excess Profits			6 404 55	
Federal on Bond Coupons				
Federal Capital Stock				
Miscellaneous (Specify)				
Total	45 167 58		36 875 68	

REMARKS

Difference between excise tax paid and accrued represents that portion of 1931 assessment against the Delphos Gas Company accrued prior to October 31-1931 on which date the physical property together with the current assets and liabilities was purchased by the West Ohio Gas Co.

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RENT DEDUCTIONS FOR LEASE OF PUBLIC UTILITY AND OTHER PROPERTIES

Description of Property. NAME.	Name of lessor or reversioner.	Total rent accrued during year.	Classification of Rent. Guaranteed interest on bonds.	Guaranteed dividends on stocks.	Cash.
	None				
	Total.				

ABSTRACTS OF LEASEHOLD CONTRACTS.

Give brief abstracts of the terms and conditions of the leases under which the respondent holds the properties above named, showing particularly (1) the date of the lease, (2) the chain or title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

None

FRANCHISES ACQUIRED DURING THE YEAR.

Name of Original Grantee.	Date of grant.	Term in years.	Territory covered.	Operations covered.	Date of acquisition by respondent.	Date of confirmation.	Actual money cost to respondent.	Amount at which carried on Balance Sheet
Village of Delphos	Dec 17 1901	Perpetual	Corporate Limits	Sale of Gas	Oct 31 1931		None	None

If the respondent did not acquire any of the above franchises directly from the original grantor thereof, show the chain of title connecting the original grantor and the respondent.

Franchise to operate in the village of Delphos acquired as a part the purchase as of Oct 31st 1931 of the physical property rights and assets of the Delphos Gas Co.

APPROPRIATIONS OF INCOME AND SURPLUS TO SINKING AND DEPRECIATION RESERVE FUNDS

Name and purpose of sinking or depreciation fund.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL.		

APPROPRIATIONS OF INCOME AND SURPLUS FOR INVESTMENT IN FIXED CAPITAL

Name and purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL.		

OTHER RESERVE FUND APPROPRIATIONS OF INCOME AND SURPLUS

Purpose of appropriation.	Amount charged to "Income."	Amount charged to "Corporate surplus."
None		
TOTAL.		

Here present statements as follows: 1. All Extensions of the Respondent's Business with Other Companies. 2. All Companies from which the Respondent's Business was Withdrawn. 3. All important Purchases of Equipment for new lines. 4. All other important Physical Changes. 5. All Consolidations or Reorganizations effected. 6. All new Stocks issued. 7. All new Funded Debt issued. 8. All changes in the respondent's holdings of Stocks and Funded Debt. 9. All other important Financial Changes.

(4) Property of the Delphos Gas Co. acquired as of October 31st 1931 in accordance with order #7211 of the Public Utilities Commission of Ohio dated October 16-1931.

(6) 3,600 shares no par value Common stock issued on authority of order #7009 of the Public Utilities Commission of Ohio dated July 28-1931

(7) Supplemental issue of $300,000.00 first and Refunding Mortgage 6% gold bonds issued in accordance with order #7009 of the Public Utilities Commission of Ohio dated July 28-1931

(9) Funded indebtedness of the Delphos Gas Co. amounting to $53,000.00 of First Mortgage 6% Gold Bonds due April-1 1935, was assumed in the purchase of the Physical property of the Delphos Gas Co.

CONTRACTS, AGREEMENTS, ETC., WITHIN OHIO.

Here give a concise statement of all Contracts, Agreements, etc., with other Companies or persons, concerning the conduct of the business of the respondent, which became effective during the year covered by this report.

None

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GENERAL INFORMATION—ARTIFICIAL GAS COMPANIES 47

*1. If any gas purchased from other gas companies during year, state:

Name of Company.	Number Cubic Feet	Price per M.	Amount Paid.
The Ohio Fuel Gas Co.	194,215,300	55 ¢	$ 104,818.38

2. Number cubic feet gas produced during year: (a) Ohio, 268,254,000
(b) Entire Company,

3. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and Commercial Sales,	34,784,800
(b) Sales to factories and industries,	32,428,500
(c) Public sales (municipalities, etc.)	1,671,000
(d) Miscellaneous gas sales,	
(e) Sales to other gas companies,	25,974,800
Total cubic feet distributed	402,059,100

*4. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.
The Delphos Gas Company	25,974,800	51 ¢	$ 13,247.15

5. Number cubic feet gas brought into Ohio, None

6. Number cubic feet gas sold outside of Ohio, None

7. State kind of gas supplied and process of manufacture, Carburetted water gas mixed with natural gas distributed to Customers in Lima, Columbus Grove, Ottawa, Leipsic, Bluffton, and Delphos, Ohio.

*If any contracts in effect providing for a minimum or minimum consumption, should be explained on page 4.

1. Number of gas wells owned: (a) Ohio, None

(b) Entire Company,

2. Number of gas wells leased and names of lessors, None

3. Number of acres under lease in Ohio at close of year, None

4. If any gas purchased from other companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Paid
The Ohio Fuel Gas Company	161,050,700	55¢	$ 88,577.92

5. Number cubic feet gas produced during year: (a) Ohio, None

(b) Entire Company,

6. Number cubic feet gas distributed during year in Ohio:

(a) Domestic and commercial sales,	131,045,200
(b) Sales to factories and industries,	4,982,800
(c) Public sales (municipalities, etc.),	739,800
(d) Miscellaneous gas sales,	
(e) Sales to other gas companies,	
Total cubic feet distributed,	136,767,800

7. If any gas sold to other gas utility companies during year, state:

Name of Company.	Number Cubic Feet.	Price per M.	Amount Received.

8. Number cubic feet gas brought into Ohio, None

9. Number cubic feet gas sold outside of Ohio, None

10. Number of gallons of gasoline produced during year, None

11. Number new wells drilled during year:

	Productive	Non-Productive	Total.
(a) Ohio,	None		
(b) Entire Company,			

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 4.

1. Number of Stations:

2. Capacity of each station in K. W. hours:

(a) A. C.

(b) D. C.

Total capacity

3. Transmission voltage,

4. Distribution voltage,

*5. If any current purchased from other companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount paid.
Not Applicable			

6. Number of K. W. hours produced during year. (a) Ohio

(b) Entire Company

7. Number of K. W. hours distributed during year in Ohio:

(a) Domestic and commercial sales,

(b) Sales to factories and industries,

(c) Public sales (municipalities, etc.)

(d) Miscellaneous electric sales,

(e) Sales to other electric companies,

Total K. W. hours distributed,

*8 If any current sold to other electric utility companies during year, state:

Name of Company.	Number K. W. hours.	Price per K. W. hour.	Amount Received.

9. Number of meter customers,

10. Number of Flat Rate customers,

11. Is current furnished for light during day time?

*If any contracts in effect providing for a maximum or minimum consumption, they should be explained on page 6.

50

STATEMENT OF INTRASTATE GROSS EARNINGS FOR OHIO FOR THE YEAR COVERED BY THIS REPORT

("Intrastate" means from one point in Ohio to another point in Ohio, or wholly within Ohio.)

Attention is called to Section 606 of the General Code of Ohio, which reads as follows:

SEC. 606. For the purpose of maintaining the department of public utilities commission of Ohio, including the payment of salaries, traveling expenses, printing, rent, light, heat, water, telephones and all other overhead expenses, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding two hundred thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intrastate gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment appropriated by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public utilities commission.

TO THE PUBLIC UTILITIES COMMISSION OF OHIO:

For the uses and purposes designated in Section 606 of the General Code of Ohio:

We, the undersigned, Emmett R. Curtis, President,

and O. L. Smith Asst. Secretary,

of West Ohio Gas Company
(Full name of respondent.)

on our oath do severally say that the amount of Intrastate Gross Earnings for the State of Ohio, for the year covered by this report, is $ 746,639.53 ; that the same has been prepared under our direction from the original books, papers, and records of said company; that we have carefully examined the same, and declare the same to be a complete and correct statement in respect to each and every matter which should be included in Intrastate Gross Earnings, during the period for which said return is made, to the best of our knowledge, information and belief.

Corporate Seal

Emmett R Curtis
President.

O L Smith
Asst Secretary.

SUBSCRIBED AND SWORN TO before me this 1st day of March, 19__

Kathryn W Cook
Notary Public - Allen Co. Ohio

Notary Seal

VERIFICATION.

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

OATH.

(To be made by the officer having control of the accounting of the respondent.)

State of Ohio }
County of Allen } ss.

F. L. Pringle (Insert here the name of the affiant.) makes oath and says that he is Comptroller (Insert here the official title of the affiant.)

of West Ohio Gas Company (Insert here the exact legal title or name of the respondent)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Public Utilities Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and including January 1, 1931 to and including December 31, 1931

F. L. Pringle
(Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this First day of March, 1932

My commission expires April - 9 - 1932 [Use an impression seal]

Kathryn W Cook
(Signature of officer authorized to administer oaths.)
Notary Public
Allen Co Ohio

SUPPLEMENTAL OATH.

(By the president or other chief officer of the respondent.)

State of Ohio }
County of Allen } ss.

Emmett R Curtin (Insert here the name of the affiant.) makes oath and says that he is President (Insert here the official title of the affiant.)

of West Ohio Gas Company (Insert here the exact legal title or name of the respondent.)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above named respondent during the period of time from and including January 1, 1931, to and including December 31, 1931

Emmett R Curtin
(Signature of affiant.)

Subscribed and sworn to before me, a Notary Public, in and for the State and county above named, this first day of March, 1932

My commission expires April - 9 - 1932 [Use an impression seal]

Kathryn W. Cook
(Signature of officer authorized to administer oaths.)
Notary Public

[fol. 1109] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 23, 1934

Comes now, the appellant, West Ohio Gas Company, and adopts its assignments of errors as its statement of the points to be relied upon.

And appellant further states that only the following parts of the record, as filed in this court, are deemed necessary to be printed by the Clerk for the hearing of the case:

Title of paper	Record pages
1. Petition in Error filed April 1, 1933 by West Ohio Gas Company, plaintiff in error	2– 17
2. Opinion of the Supreme Court of Ohio, dated May 16, 1934	18– 43
3. Petition for Rehearing filed by West Ohio Gas Company on May 29, 1934.	44– 67
4. A copy of all docket and all journal entries in the above entitled cause (including entries as to the denial of petition for rehearing and as to mandate) appearing on the records in your office	68– 71
5. Petition for Appeal, Assignment of Errors and Prayer for Reversal filed June 15, 1934, by West Ohio Gas Company	72– 80
6. Statement as to Jurisdiction on Appeal filed June 15, 1934, by West Ohio Gas Company. (To be printed separately)	81– 88
[fol. 1110]	
7. Order Allowing Appeal, signed by the Chief Justice of the Supreme Court of Ohio, dated and filed on June 15, 1934	89– 90
8. Citation and proof of service filed June 15, 1934	97

Title of paper	Record pages
9. Service of papers under Rule 12 of the Supreme Court of the United States and acknowledgment of service by Attorney General of Ohio, attorney for The Public Utilities Commission of Ohio, defendant in error, filed June 15, 1934	98– 99
10. Order transmitting certain original exhibits	108–109
11. Complaint and appeal from rates for gas utility service in the city of Lima filed with The Public Utilities Commission of Ohio by West Ohio Gas Company as cause No. 5137 on May 9, 1928	110–113
12. Finding and order, entered September 15, 1931, fixing tentative valuation of the property used and useful by West Ohio Gas Company in rendering gas utility service in Lima, Ohio.	114–116
13. Protest against tentative valuation of the property of West Ohio Gas Company, filed by said company with The Public Utilities Commission of Ohio on October 14, 1931	117–123
14. Protest of the City of Lima to Tentative Valuation, filed with The Public Utilities Commission of Ohio on October 14, 1931	124
15. Finding and order fixing final valuation of said property, entered January 27, 1932	125–127
16. Order of The Public Utilities Commission of Ohio, dated March 8, 1933, placing in evidence the annual reports of West Ohio Gas Company filed with said commission for 1928, 1929, 1930 and 1931	128
17. Order of The Public Utilities Commission of Ohio fixing rates for gas utility service within the city of Lima for the ordinance period, dated March 11, 1933	129–130

Title of paper	Record pages
18. Opinion of The Public Utilities Commission of Ohio relative to order fixing said rates, dated March 11, 1933	131–138
[fol. 1111]	
19. Petition for Rehearing from said final order fixing rates, filed with The Public Utilities Commission of Ohio by West Ohio Gas Company on March 18, 1933	139–150
20. Order of The Public Utilities Commission of Ohio denying Petition for Rehearing, entered on March 22, 1933	151
21. Order of The Public Utilities Commission of Ohio directing the transmittal of papers in said cause No. 5137 to the Clerk of the Supreme Court of Ohio, entered April 12, 1933, and copy of all docket entries on the docket of The Public Utilities Commission of Ohio in reference to said appeal, from said rate ordinance	152–158
22. Nunc pro tunc order as of March 10, 1933, entered by The Public Utilities Commission of Ohio under date of May 19, 1933, and filed in the Supreme Court of Ohio on May 27, 1933	159–164
23. All of the stenographic transcript of the proceedings and testimony taken before The Public Utilities Commission of Ohio, which has, under the praecipes for transcript filed in this appeal, been included in the transcript of record in this appeal	165–713
24. The following exhibits and documents offered and introduced before The Public Utilities Commission of Ohio:	
(1) Exhibits and documents introduced by the West Ohio Gas Company and designated as follows:	

Title of paper	Record pages
Page 18 (Table 1) of Company Exhibit No. 1	714
Company Exhibit No. 2	715–726
Page 18 (Table 1) of Company Exhibit No. 7	727
Company Exhibit "D"	728–729
Company Exhibit "E"	730
Company Exhibit No. 102	731
Company Exhibit No. 103	732
Company Exhibit No. 104	733–754
Company Exhibit No. 105	755–756
Company Exhibit No. 106	757–758
Company Exhibit No. 107	759
Company Exhibit No. 108	760
[fol. 1112]	
Statement by Mr. Eugene L. Heyser, valuation engineer, dated May 28, 1930, answering on behalf of West Ohio Gas Company the question propounded by Commissioner (then Chairman) Geiger during the hearing on April 2, 1930	761–768
Statement by Mr. R. L. Lynch, general superintendent, answering on behalf of West Ohio Gas Company the question propounded by said Commissioner Geiger at said hearing	769–775
List of meters in service from year to year during the years 1924 to 1930, both inclusive	776–777
(2) Exhibits and documents introduced by the City of Lima, Ohio, and designated as follows:	
City Exhibit No. 5	778–779
City Exhibit No. 9 a-e	780–784
City Exhibit No. 10	785–786
City Exhibit No. 12	787–788
City Exhibit No. A-1	789
City Exhibit No. A-2	790
The following pages of City Exhibit No. A-3; the caption on page numbered 1; the unnumbered page immediately following page 13; pages numbered 14 to 25, both inclusive, including the unnum-	

Title of paper	Record pages
bered page immediately following page numbered 19; the unnumbered page immediately following page 31; and pages numbered 32 to 69, both inclusive, including certain unnumbered pages inserted between the numbered pages last above mentioned	791, 806, 807-819, 827, 828-871.
Statement by Mr. H. R. Allensworth, valuation engineer, dated April 11, 1930, answering on behalf of the city of Lima, Ohio, the question propounded by Commissioner (then Chairman) Geiger during the hearing on April 2, 1930	872–875
(3) Exhibits and documents introduced by The Public Utilities Commission of Ohio and designated as follows:	
Commission Exhibit No. 1	876–880
Commission Exhibit No. 2	881–882
Commission Exhibit No. 3	883–884
Report by Commission Engineer L. F. Dabe, filed after hearings on protests against tentative valuation	885–891
[fols. 1113 & 1114]	
The following pages of Commission Exhibit 1 of March 8, 1933: Both sides of the front cover page; pages 1 to 8, both inclusive; pages 10 to 16, both inclusive; pages 19 to 36, both inclusive, and pages 41 to 51, both inclusive	(Furnished as an original exhibit)
The following pages of Commission Exhibit 2 of March 8, 1933: Both sides of the front cover page; pages 1 to 8, both inclusive; pages 10 to 16, both inclusive; pages 19 to 36, both inclusive, and pages 41 to 51, both inclusive	(Furnished as an original exhibit)
The following pages of Commission Exhibit 3 of March 8, 1933: Both sides of the front cover page; pages 1 to 8, both inclusive;	

Title of paper	Record pages
pages 10 to 16, both inclusive; pages 19 to 36, both inclusive, and pages 41 to 51, both inclusive	(Furnished as an original exhibit)
The following pages of Commission Exhibit 4 of March 8, 1933: Both sides of the front cover page; pages 1 to 8, both inclusive; pages 10 to 16, both inclusive; pages 19 to 32, both inclusive; the note appearing on page 36 and pages 41 to 51, both inclusive	(Furnished as an original exhibit)
25. This statement of points to be relied upon and designation of the parts of the record to be printed	.....

Dated this 21st day of July, A. D. 1934.

Chas. C. Marshall, Harry O. Bentley, Edmond W. Hebel, Attorneys for West Ohio Gas Company, Appellant.

Service of a copy of the foregoing "Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed" is hereby acknowledged this 21st day of July, A. D. 1934.

John W. Bricker, Attorney General of Ohio; Donald C. Power, Assistant Attorney General of Ohio, Attorneys for The Public Utilities Commission of Ohio, Appellee.

[fol. 1115] [File endorsement omitted.]

Endorsed on cover: File No. 38,840. Ohio Supreme Court. Term No. 212. West Ohio Gas Company, appellant, vs. The Public Utilities Commission of Ohio. Filed July 23, 1934. File No. 212, O. T., 1934.

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Bluefield Waterworks & Improvement Company v. Public Service Commission of the State of West Virginia et al., 262 U. S. 679	7
Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio et al., 54 Sup. Ct. Rep. 763	8
Dayton Power & Light Company v. Public Utilities Commission of Ohio et al., 54 Sup. Ct. Rep. 647	7
Ohio Utilities Company v. Public Utilities Commission of Ohio, 267 U. S. 359	7
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United Railways and Electric Company of Baltimore v. West et al., 280 U. S. 234	7
Williams v. Bruffy, 96 U. S. 176	8
Young, Ex Parte, 209 U. S. 123	8

Statutes Cited.

Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54 (U. S. C. Sup. VI, Title 28, Section 861a)	1
Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. Sup. VI, Title 28, Section 861b)	2
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 212

WEST OHIO GAS COMPANY,

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

Pursuant to Rule 12 of the Supreme Court of the United States, West Ohio Gas Company, appellant in this appeal from a decision of the Supreme Court of Ohio made in the above cause, respectfully shows the following in support of the jurisdiction of the Supreme Court of the United States to review the aforesaid cause on appeal:

A.

Statutory Provisions Sustaining Jurisdiction.

Chapter 14, 45 Stat. 54 of the Acts of Congress of January 31, 1928 (U. S. C. Sup. VI, Title 28 "Judicial Code and Judiciary", Sec. 861a), provides:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

Chapter 440, 45 Stat. 466 of the Acts of Congress of April 26, 1928 (U. S. C. Sup. VI, Title 28 "Judicial Code and Judiciary", Sec. 861b), provides:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

Chapter 229, 43 Stat. 936 of the Acts of Congress, amends subsection (a) of Section 237 of the original Judicial Code, so that the same provides as follows (U. S. C., Title 28, "Judicial Code and Judiciary", Sec. 344 (a)):

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

B.

Date of Judgment and of Petition for Appeal.

NOTE:

Paragraph 2 of Rule 10 of the Supreme Court of the United States provides that the clerk of the court from which an appeal to the Supreme Court of the United

States may be allowed shall make and submit to that Court a certified copy of the material parts of the record.

Rule 12 of the Supreme Court of the United States, as amended, now requires the presentation to the judge to whom the application for allowance of the appeal is made, of a statement in typewritten form of the grounds of jurisdiction.

It is assumed that where the application for appeal is made to the chief justice of the court possessing the record, the transcript of the record need not be made up until or unless the appeal is allowed The appropriate pages of the record are therefore left blank, and appellant undertakes to supply the appropriate pages for insertion therein prior to the printing of the record for the use of the Supreme Court.

The decision of the Supreme Court of Ohio was announced by written opinion dated May 16, 1934 (R. 18-43). A petition for rehearing was filed in said court on May 29, 1934, within the time fixed by the rules of said court (R. 44-67; 69). (Rule No. XX of said court.) Said petition for rehearing was denied by said court on June 6, 1934 (R. 69, 70).

The petition for appeal was filed in the office of the clerk of the Supreme Court of Ohio and allowed by the chief justice of said court on June 15, 1934 (R. 69; 72-80).

C.

Nature of Case and Ruling Below.

The case in the Supreme Court of Ohio was a proceeding in error under Sections 544, 545 and 549 of the General Code of Ohio, from a final order made by appellee on March 11, 1933, fixing a rate to be charged by appellant for gas utility service rendered within the city of Lima, Ohio, for a

period of five years from and after on or about April 19, 1928.

The Supreme Court of Ohio is the highest and the only court in Ohio in which a decision in the case may be had.

Said Sections 544, 545 and 549 of said General Code of Ohio provide as follows:

Section 544 (Volume 103 Ohio Laws, page 815, section 33):

> "A final order made by the commission shall be reversed, vacated or modified by the supreme court, on a petition in error, if upon consideration of the record such court is of the opinion that such order was unlawful or unreasonable."

Section 545 (Volume 103 Ohio Laws, page 815, section 34):

> "The proceeding to obtain such reversal, vacation or modification shall be by petition in error, filed in the supreme court, by any party to the proceeding before the commission, against the public utilities commission of Ohio, setting forth the errors complained of. Thereupon unless the same is duly waived a summons shall issue and be served, as in other cases, upon the chairman of the commission, or, in the event of his absence, upon any member of the commission, or by leaving a copy at the office of the commission at the city of Columbus. The court may permit any interested party to intervene by cross-petition in error."

Section 549 (Volume 103 Ohio Laws, page 816, section 38):

> "No court other than the supreme court shall have power to review, suspend or delay any order made by the commission, or enjoin, restrain or interfere with the commission or any member thereof in the performance of official duties. Nor shall the writ of mandamus be issued against the commission or any member by any court other than the supreme court."

The said final order of appellee was made in a proceeding in which appellant had complained of, and appealed from, an ordinance of the city of Lima, Ohio, approved March 19, 1928, fixing the rate to be charged by appellant for gas utility service rendered by it within said city of Lima, Ohio, for a period of five years from and after on or about April 19, 1928 (R. 110-112). Said final order of appellee found said ordinance rate to be unjust and unreasonable, but fixed a rate to be charged for said gas utility service during said five-year period that was substantially lower than the rate that was being charged by appellant and had been charged by it during said five-year period (R. 129-130; 131). Said final order was accompanied by an opinion of appellee setting forth its reasons in support of said order (R. 131-138).

Subsequent to the entry by appellee of said final order fixing said rates, appellant on March 18, 1933, filed with appellee an application for rehearing on the grounds: that the rates fixed by the said final order were unlawful and unreasonable and confiscatory of the property of appellant devoted to the public service, and therefore said final order impinged upon rights guaranteed appellant by, and was invalid under, the Fourteenth Amendment of the Constitution of the United States; and that because said final order was not founded upon the evidence, because it disregarded the evidence and because it was based upon matters not properly in evidence, appellant had been denied the due process of law and equal protection of the laws to which appellant was entitled under the Fourteenth Amendment of the Constitution of the United States. Said application for rehearing set out specifically the basis of each objection by appellant to said final order. In and by said application for rehearing appellant asked that it be permitted to show in evidence the facts as to its decreased revenues and net earnings from gas utility service in Lima

during 1932 and the then expired portion of 1933, which facts had not yet been determined when the hearings before appellee were closed, and that appellant be permitted to show the exact effect of the application of the rates fixed by appellee upon appellant's revenues and net earnings from said gas utility service for so much of said ordinance period as had expired (R. 139-150).

Said application for rehearing was required by the laws of the State of Ohio as a condition precedent to a review by the Supreme Court of Ohio of the said final order of appellee. Said application for rehearing was denied on March 22, 1933 (R. 151).

Upon such denial appellant filed in the Supreme Court of Ohio on April 1, 1933, a petition in error claiming that, for reasons which were therein specifically set out and which were the same as those set out in said application for rehearing filed with appellee as aforestated, said final order of appellee was unlawful and unreasonable and confiscatory of the property of appellant devoted to the public service, and impinged upon rights guaranteed appellant by, and was invalid under, the Fourteenth Amendment of the Constitution of the United States, and that because said final order appealed from was not founded upon the evidence, because it was made in disregard of the evidence, and because it was based upon matters not properly in evidence, appellant had been denied the due process of law and the equal protection of the laws to which it was entitled under the said Fourteenth Amendment to the Constitution of the United States. In its said petition in error, appellant also claimed and asserted that because appellee had denied appellant the rehearing duly prayed for, had denied appellant an opportunity to show the facts as to its revenues and net earnings from said gas utility service in Lima during the period subsequent to the closing of the taking of testimony in the proceedings before appellee, and had

denied appellant an opportunity to show the exact effect of the rates fixed by appellee upon appellant's revenues and net earnings from said gas utility service for so much of said ordinance period as had expired, appellant had been denied the due process of law and the equal protection of the laws to which it was entitled under the Fourteenth Amendment to the Constitution of the United States (R. 2-17).

The proceedings in error filed by appellant were docketed in said Supreme Court of Ohio as cause No. 24104.

The question of the invalidity of said order on said grounds above referred to was presented and submitted to the Supreme Court of Ohio in both written and oral argument.

The judgment of the Supreme Court of Ohio rendered on May 16, 1934, as aforestated, was in favor of the validity of said final order of appellee (R. 70).

D.

Cases Believed to Sustain Jurisdiction.

The following decisions are believed to sustain jurisdiction of this appeal:

Bluefield Waterworks & Improvement Company v. *Public Service Commission of the State of West Virginia et al.*, 262 U. S. 679;

Southwestern Bell Telephone Company v. *Public Service Commission of Missouri et al.*, 262 U. S. 276;

Ohio Utilities Company v. *Public Utilities Commission of Ohio*, 267 U. S. 359;

United Railways and Electric Company of Baltimore v. *West et al.*, 280 U. S. 234;

Dayton Power & Light Company v. *Public Utilities Commission of Ohio*, — U. S. —, 54 Sup. Ct. Rep. 647;

Columbus Gas and Fuel Company v. *Public Utilities Commission of Ohio et al.*, — U. S. —, 54 Sup. Ct. Rep. 763;

Williams v. *Bruffy*, 96 U. S. 176, 182-3;

Ex parte Young, 209 U. S. 123, 144;

Atlantic Coast Line Railroad Company v. *City of Goldsboro, North Carolina*, 232 U. S. 548, 555;

St. Louis, Iron Mountain & Southern Railway Company v. *Starbird, Administrator of Miller*, 243 U. S. 592.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of section 237 of the Judicial Code, as amended by the Act of February 13, 1925 (now section 344(a) of Title 28 of the U. S. C.), and as further amended or modified by the Acts of January 31, 1928, and April 26, 1928 (now sections 861a and 861b of Title 28 of U. S. C., Sup. VI).

Respectfully submitted,

CHAS. C. MARSHALL,
H. O. BENTLEY,
COOKE, SULLIVAN & RICKS,
Attorneys for West Ohio Gas Company,
Appellant.

Received a copy of the foregoing Statement as to Jurisdiction on Appeal this 15th day of June, 1934.

JOHN W. BRICKER,
Attorney General of Ohio,
DONALD C. POWER,
Assistant Attorney General of Ohio,
Attorneys for The Public Utilities Commission of Ohio,
Appellee.

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STA

OCTOBER TERM, A. D. 1934.

No. 212.

WEST OHIO GAS COMPANY, an Ohio Corpora

App

v.

THE PUBLIC UTILITIES COMMISSION OF O

App

APPEAL FROM THE SUPREME COURT OF OHIO.

BRIEF AND ARGUMENT FOR APPE

EDMOND W. HEISEL,
HARRY O. BENTLEY,
CHARLES C. MARSHALL,
Counsel for A

B. A. Bowlby Print, Indianapolis, Ind.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1934.

No. 212.

WEST OHIO GAS COMPANY, an Ohio Corporation,
Appellant,

v.

THE PUBLIC UTILITIES COMMISSION OF OHIO,
Defendant in Error,
Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO.

BRIEF AND ARGUMENT FOR APPELLANT.

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*May It Please the Court:**

OPINIONS BELOW.

This case comes up on an appeal from a judgment** of the Supreme Court of Ohio affirming a final order of

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*NOTE: Wherever throughout this Brief and Argument italicized words appear within quotations, the italics are ours unless otherwise noted.

**NOTE: So termed by the state court in its mandate issued in the cause.

appellee fixing rates to be charged by appellant for gas utility service rendered within the city of Lima, Ohio during the five-year period commencing about April 19, 1928.

The opinion of the court below appears on pages 14-35 of the printed record in this court. It is reported in 128 Ohio State 301 (1934).

The final order of appellee appears on pages 85-8 of the printed record. The original opinion of appellee accompanying said final order appears on pages 88-99 of the printed record. The original opinion was changed by a *nunc pro tunc* order of appellee, which was entered under date of May 19, 1933 without notice to appellant, and was filed in the state supreme court on May 27, 1933 without notice to appellant. This order, in which the revised pages of the original opinion are set out in full, appears on pages 118-24 of the record in this case.

JURISDICTION.

A statement as to jurisdiction has been filed by appellant and separately printed, pursuant to Rule 12 of this court. The fact that section 237 of the Judicial Code confers jurisdiction upon this court is not controverted. Probable jurisdiction was noted by this court on October 8, 1934.

STATEMENT OF THE CASE.

The rate order of appellee, which is challenged by these proceedings, was entered March 10, 1933 and fixed rates to be charged by appellant for gas utility service rendered by it to consumers within the city of Lima, Ohio for a five-year period commencing on or about April 19, 1928. This rate order drastically reduces the rates for gas utility service that have been charged in Lima.

While we shall endeavor to eliminate all non-essentials from our statement of the facts, we shall try to give the court a complete picture of all facts that might be deemed relevant to the issues to be decided. In a case of this kind, it is, we believe, essential that the court should have this at the outset of its consideration of the problems involved.

Throughout this statement, brief and argument appellant, West Ohio Gas Company, will generally be referred to as the "company;" appellee, The Public Utilities Commission of Ohio, will generally be referred to as the "commission;" and the city of Lima, Ohio, a municipal corporation, will generally be referred to either as the "city" or "Lima."

History of Proceedings.

On March 19, 1928 the city, acting under the provisions of sections 614-44, and 3982 and 3983 of the General Code of Ohio, passed an ordinance No. 2675 purporting to fix and regulate the maximum price which the company should be permitted to charge for gas utility service furnished to consumers within the city during a period of five years from and after the effective date of the ordinance. These rates were as follows: (R. 70).

First 1,000 cubic feet of gas used per month, $.90.

Next 3,000 cubic feet used per month, $.80 per thousand cubic feet.

Next 6,000 cubic feet used per month, $.75 per thousand cubic feet.

All over 10,000 cubic feet used per month, $.55 per thousand cubic feet.

The ordinance provided that it should become effective at the earliest date allowed by law. Within the time allowed by the Ohio statutes, the company filed with the commission, as cause No. 5137, its appeal from said ordi-

nance, and elected, pending the determination of this appeal, to charge the schedules of rates in force and effect on the date of the passage of the ordinance, all as authorized and provided for by sections 614-44, 614-45 and 614-46 of the General Code of Ohio.

The general rates which the company was then charging, and has since continued to charge are the following: (R. 417).

First 400 cubic feet of gas or less used per month, $1.25.

Next 9600 cubic feet used per month, $1.05 per thousand cubic feet.

Next 15,000 cubic feet used per month, $1.00 per thousand cubic feet.

All over 25,000 cubic feet used per month, $.75 per thousand cubic feet.

These rates, except as they have been modified by a voluntary reduction made by the company January 1, 1926, are the rates which were authorized under an order entered on April 25, 1925 by the commission in advance utility cause No. 179, after it had completed a valuation of the company's property devoted to the public service and a study of the estimated revenues to be derived therefrom and expenses to be incurred therein. (R. 516-21).

After the filing of said appeal the commission proceeded to hold hearings as to the valuation of the property of the company used and useful in rendering gas utility service within Lima. The initial hearing was commenced on July 12, 1928, and the company then presented its evidence as to the value of its property. Subsequent hearings were held from time to time, both the city and the commission finally presenting valuations. On January 27, 1932 the commission entered a final valuation order in said cause finding that the value as of March 31, 1928 of the

property of the company so used and useful was $1,901,696.26. This sum was the exact amount reported by the engineering staff of the commission as the value of the physical property used and useful in rendering the service. (R. 627-35, 297-303, 310-5). It included no amount whatsoever for going value. (R. 303). Deductions were made for alleged over-capacity of the plant. (R. 301). The company filed a petition for rehearing as to this final valuation, but that petition was denied. No appeal was taken from the valuation order. The company, upon electing to seek a review of the final rate order of the commission in the state court, was precluded under the Ohio statutes from attacking in that proceedings the unreasonableness of the final valuation order; and was bound before that court by the rate base that had been fixed. (See opinion of state court. 128 Oh. St. 301, 311; R. 23). See also General Code of Ohio, section 547 (Appendix C, pp. 203-4, *infra*).

Several months after the entry of the final valuation order, the commission proceeded to hold hearings relative to the revenues derived from, the cost of, and the net return earned in, rendering gas utility service to consumers in Lima. Initial hearings on this phase of the proceedings were held on June 7 and 8, 1932. At that time the company introduced its testimony and exhibits as to those matters. At subsequent hearings the city presented its evidence on that subject. The case was closed on July 19, 1932. At these hearings the commission introduced no evidence of its own as to the company's revenues, expenses or net earnings. Under date of March 8, 1933, however, and without any notice to the company, the commission entered an order putting in evidence as commission's exhibits numbered 1, 2, 3 and 4, respectively, the annual reports covering the entire operations of the company, which had been filed by it with the commission for

the calendar years 1928, 1929, 1930 and 1931, respectively. Notice of this order was not given to the company until the time that it was served with a copy of the final rate order of March 10, 1933.

The commission, when it entered its order as to the annual reports, had in its possession the annual report of the company for the calendar year 1932, which had been filed on or before March 1, 1933. It failed to include this report among those put in evidence, and refused to do so when this was specifically requested by the company. (R. 85, 109-11).

Under date of March 10, 1933, the commission entered its final rate order in this proceeding. That order was accompanied by a written opinion. (R. 85-99, 118-24). The order found that the rates fixed by the Lima ordinance of March 19, 1928 were insufficient, unjust and unreasonable rates, but fixed rates to be charged for service in Lima during the ordinance period, averaging about 13½% below those that the company had been charging. These rates are as follows: (Commission order, p. 1) (R. 86).

400 cubic feet or less used per month, $1.00.

Next 9600 cubic feet used per month, $.95 per thousand cubic feet.

Over 10,000 cubic feet used per month, $.75 per thousand cubic feet.

Penalty for non-payment of bill within ten days after receipt of bill, $.05 per thousand cubic feet.

The rates fixed were made retroactive to the effective date of the ordinance, which is probably April 19, 1928. The commission ordered the company to refund to its customers in Lima the difference between the amounts actually collected by the company for service during the ordinance period and the amount that would have been charged for such service if the rates fixed by the commission had

actually been in effect during that time. After careful calculation, the company estimates that the refunds ordered exceed $330,000.00 exclusive of interest.

On March 18, 1933 the company filed with the commission its written application for a rehearing. In addition to pointing out specifically many errors and irregularities that the company believed rendered the order unlawful, the company asked that the commission permit it to show the facts as to its decreased revenues and net return from service in Lima for the year 1932 and the then current year, that the commission permit it to show the exact effect of the application of the commission rates upon its revenues for so much of the ordinance period as had expired, that the commission base its rate order on the competent evidence in the case, and that the commission either exclude all the annual reports which the company had filed with it or put in evidence the 1932 annual report. By an order entered March 22, 1933, the commission denied these requests and denied the application for rehearing. (R. 100-11.)

The company, thereupon, filed, under General Code of Ohio, sections 544-5, its petition in error in the Supreme Court of Ohio, and asked a stay of the commission order until a judicial review of the proceedings could be had.

The Evidence.

The record before the commission consisted of 1261 pages of oral testimony, of 46 exhibits introduced by the company, of 16 exhibits introduced by the city and of 8 exhibits introduced by the commission. Much of this testimony and many of these exhibits are applicable to the question of valuation. This is true of the major part of the testimony contained in the first 1000 pages of the transcript of evidence, and of much of the data shown in Company Exhibits 1, 3 to 29, both inclusive, F and G, 100 and 101, in City Exhibits 1 to 7, both inclusive, 11, and A-4, and in Commission Exhibits 1, 2, 3 and 4. In view of

the fact that no appeal was taken from the final valuation order and that the company appealed the validity of the final rate order to the state supreme court and not to a federal equity court, it is unnecessary here to review this evidence as to valuation. Under the statute (General Code of Ohio, section 547), the action of the commission on that phase of the controversy was not subject to review in such an appeal.

Generally speaking, the facts which are susceptible of definite ascertainment are not in dispute. There is little material contradiction in the factual evidence. The questions presented for decision are generally questions of law, or at most, mixed questions of law and of ultimate fact as the latter may be deduced from the evidentiary facts shown. The untenable result reached by the commission was predicated principally on the commission's disregard of the facts, on its mistaken calculations, on findings unsupported by evidence, and on its refusal to follow applicable and controlling legal principles. The state supreme court in upholding the order necessarily approved or disregarded these errors and this arbitrary and unsupported action of the commission. It, likewise, failed and refused to give the company that independent review of the law or the facts, which due process requires.

In the following summary of the evidence applicable to the cost of rendering the service given, and the return earned therein, the evidence, the commission order, and the proceedings before the state court will be considered under what are deemed to be appropriate headings.

History of the Company.

This company was organized under the laws of the state of Ohio late in 1924. Shortly after its organization it acquired, under authorization of the commission given in

cause No. 3330, gas utility properties used in serving Lima and three other Ohio communities. These properties were acquired at a price fixed by the commission after an appraisal by it of the properties to be purchased. (R. 396, 406, 553-4). The amount and the kind and character of the securities issued and sold to provide funds for the payment of the acquired properties were fixed by the commission. (R. 553-4, 396-9). The company commenced its utility operations on December 1, 1924. (R. 129). From time to time since that date it has, with the approval of the commission, acquired additional utility properties; and has from time to time made additional capital investment in improving and extending its plants used for service in Lima and elsewhere. (R. 528A, 528B, 157, 304-9). It now serves eleven communities. Part of these are served with natural gas, and part with a mixed gas. (R. 129, 141, 783-4). In 1931 the company's revenues in Lima represented approximately 63.9% of its utility revenues, and about 55.6% of its customers were there located. Prior to the acquisition of additional properties in 1930 and 1931, a considerably higher proportion of its customers and revenues were in Lima. (R. 530, 636-816).

The general management of the company was shown to be in the hands of capable men having long experience in the gas utility business. Until his death in 1931, Mr. Emmett R. Curtin was president of the company, and the man in active charge of its business. During his entire business life he had been active in the operation of gas properties in Ohio, and his actual experience covered all phases of the business. (R. 166-7, 245-7). Mr. Frank L. Pringle, comptroller (since March, 1934, the vice-president and general manager) of the company, has been associated with the company, and predecessor companies serving gas in Lima, for more than twenty years. The records of the

company are under his supervision and he has had active charge of the accounting records of the company since its formation. (R. 125-6, 316). Mr. R. L. Lynch is the general superintendent of the company in charge of the manufacturing plant in Lima and of the distribution of gas in that city. His experience in these phases of the business of this company extend over a seventeen-year period. (R. 165-6, 279).

Source of Gas Supply.

Lima is one of the communities served with mixed gas. When gas service was first established in Lima many years ago, artificial gas was furnished, but only the business district of the city was supplied. Later, with the development of gas fields in adjacent Indiana and Ohio territory, natural gas service, primarily for residential consumers, was inaugurated by a separate company. Subsequently, both these companies came under the same general management and control. Prior to the sale of their properties to the interests organizing the West Ohio Gas Company, neither of these companies was in any way connected with those interests. (R. 146-9, 206-9, 251-4).

All the adjacent gas fields proved erratic producers and short lived. Pipe lines were frequently being changed from one field to another. (R. 245-7, 251). Shortly before the World War all sources from which it was then practicable to obtain a natural gas supply for Lima became inadequate or entirely non-productive. Among other steps thereafter taken was the construction of new units for producing manufactured gas. In order to maintain the heating content of the manufactured gas at the customary standard, it was necessary to enrich with natural gas the blue or water gas produced. It is undisputed that sufficient natural gas could not be obtained to supply natural gas at retail and also to enrich the manufactured gas. The

gas shortage was especially acute during the winter months. To meet this situation and enable it to render adequate service, the company, shortly after it acquired these properties, applied to the commission for authority to discontinue the service of natural gas in Lima. After due inquiry by the commission, this application was granted. (R. 572-4, 206-9).

The company does not control, and never has controlled, any source of natural gas supply. It has no means of securing such a supply from any company, directly or indirectly affiliated with it. It must obtain natural gas wherever it can secure it in the open market. During many years there have been repeated occasions of shortage of supply, and instances where the parties from whom gas was being secured threatened to discontinue the supply entirely. This was the situation that existed in 1929 when the company entered into a five-year contract for the natural gas needed for enriching purposes. (R. 526-7, 217-9, 224-5, 255-6, 261, 268-70, 411).

The fact is not shown by the evidence in this case, but it is true, as claimed by the commission, that at the present time there are large quantities of natural gas being transported into Ohio. This situation exists because of the very recent development of the Texas and other gas fields and the construction of long distance pipe lines completed late in 1931 or in 1932. This situation is the exact opposite of that which obtained prior thereto, and at the time of the company's contract for gas.

In, and long prior to, 1928, and thereafter until recently, it has been impossible to procure enough natural gas to serve Lima on a natural gas basis, and it has been exceedingly difficult to secure contractual assurance that the amount would be supplied which was needed for use in connection with manufacuring gas for service in Lima. In 1928 the company had a contract for procuring natural

gas from the Ohio Fuel Gas Company, which contract was for a period ending shortly after the end of that year. Throughout that year the company tried to arrange to procure gas at a better price and from other sources, but was wholly unable so to do. (R. 409-11). [See also *West Ohio Gas Company v. Public Utilities Commission*, 42 F. (2d), 899 (1928).] The company was forced, therefore, to renew its contract with the Ohio Fuel Gas Company for gas, and to pay the price demanded by that company for its product. The price under such contract was 55 cents per thousand cubic feet. (R. 259).

LIMA ACCOUNTING DISTRICT OF THE COMPANY.

At the present time the company serves gas to eleven communities. The company accounting records are kept in accordance with the uniform classification of accounts for gas utilities, prescribed by the Ohio commission. (R. 316, 339). Accounts covering the revenues and expenses from gas utility service are kept by accounting districts. Generally speaking, each municipality is a separate accounting district, but if there is some service given to consumers residing in the immediate vicinity of the municipality, the revenues from, and the cost of, such service are included in the revenues and expenses for the district. This is the situation in reference to accounts for Lima. The Lima district accounts cover not only service rendered within the city itself, but that given to consumers in the immediately adjacent territory, which includes a small unincorporated community known as Cridersville, where about 120 customers are served. (R. 319). Revenues from such service outside the city limits constitute slightly over 2% of the total revenues for the Lima district. The rates in this rural territory are the same as those in Lima. It is evident, therefore, that the net earnings for the Lima district are not greatly different from those secured within

the Lima city limits. For this reason, the company in presenting its exhibits as to the net earnings included all the figures for the Lima district. Since the valuation by the commission only covered property used and useful within the city of Lima, the addition to net earnings was prejudicial to the company. The company felt, however, that since the difference was too small to change the results, it was preferable to present the figures as disclosed by the actual accounts. In view of the fact that the commission in its order used revenue and expense figures applicable to the city of Lima alone, it became necessary in this brief and argument to make such adjustments as are required to put on a basis for comparison, the figures presented by the company in its exhibits.

THE COMPANY'S REVENUES FROM GAS SERVICE IN LIMA.

These were shown by the company in detail for the Lima district for the years 1927, 1928, 1929, 1930 and 1931. (R. 529-48). They were likewise shown for the twelve-month period ending March 31, 1928. (R. 548-9).

The revenue figures submitted by the company were taken from the books of the company, and were undisputed. They showed that from gas utility service in the Lima district the company obtained $492,945.07 in 1927; $511,105.08 in 1928; $511,853.64 in 1929; $491,255.46 in 1930, and but $457,775.74 in 1931. (R. 530).

Neither the city nor the commission offered any evidence during the hearings as to company revenues. In so far as the company's annual reports, which the commission ordered put in evidence on March 8, 1933, disclose revenue figures for the Lima district, such figures accord with those shown in the company's exhibits.

The commission in its order found that the average annual revenue derived by the company from gas utility service in Lima was $482,904.50 during the four-year

period ending December 31, 1931. The commission did not disclose how it obtained this figure. Certainly there is nothing in the evidence from which that figure could be arrived at. Company Exhibit 104 discloses for this four-year period an average annual revenue in the Lima district of $492,997.48. (R. 530). The commission revenue figure of $482,904.50 for Lima service alone is 97.95% of the company average of $492,997.48 for the Lima district. This difference of 2.05% is an approximately accurate measure of the proportion of Lima district revenue that is annually derived from service rendered outside the city limits of Lima. We, therefore, used it in the brief before the state court, and will use it here, as the measure for adjusting the company exhibit as to earnings, so that the data there contained may be readily compared with the commission findings.

So adjusted, the company exhibit as to revenues shows that in 1927 the company obtained $482,839.72 from gas utility service rendered within the city of Lima; $500,627.43 in 1928; $501,360.64 in 1929; $481,184.72 in 1930; and $448,391.34 in 1931. By eliminating the 1932 annual report of the company and by refusing to give the company an opportunity to show in evidence its revenues from Lima service during that year, the commission kept out of evidence the fact that revenues for 1932 were materially lower.

The city's own evidence showed the fact that revenues under the ordinance would not have covered operating expenses. (R. 586-9, 450).

The Cost of Rendering Gas Service in Lima.

The cost of rendering gas utility service in the Lima district was shown by the company for the same periods for which revenues were shown. (R. 529-48, 316-385). Mr.

Frank L. Pringle, comptroller for the company, testified to the fact that these expenses were those shown on the books of the company, except as to certain adjustments in the item of reserve for amortization of pipe line and as to retirement allowance for 1931. The nature of these expenses, the basis of allocation for such of them as were a part of expenses incurred for the company as a whole, and the propriety of the adjustment of the two items referred to were fully explained by him. He was subject to cross-examination by the commissioners and by counsel for the city. His testimony showed that all expenses which were incurred solely in connection with gas utility service in the Lima district were charged *directly* to that service, and no apportionment of such expenses between communities served was required. Such expense as could not be charged direct, but was incurred in common for all districts was apportioned on such basis as the accounting officers of the company deemed most equitable. For example, commercial expense in connection with rendering bills, for the entire company, which in 1931 was incurred in the central office at Lima, was divided on the basis of accounts served. (R. 543). Allocation of that part of general and miscellaneous expense that was a joint expense for the entire company was made on a gross revenue basis. (R. 545-8).

The operating expenses as shown by Company Exhibits 104 and 105, when made applicable to the city of Lima alone by the 2.05% reduction heretofore explained, are $396,002.64 for 1927; $382,992.75 for 1928; $402,743.55 for 1929; $381,733.20 for 1930; $369,308.22 for 1931; and $399,523.29 for the twelve-month period ending March 31, 1928.

The city introduced an exhibit as to operating expenses in connection with Lima gas service. (R. 577-616). That exhibit contains, on pages 26 to 67, elaborate calculations

for allocating to the city of Lima a portion of distribution, commercial, new business and general and miscellaneous expense for the Lima district. While the percentages there allocated to Lima are somewhat less for the items analyzed than the 2.05% we have here adopted, the difference is only about one-half of one per cent. of the total district expenses for such items, and is negligible as far as affecting the result in this case.

The various studies in City Exhibit A-3 that purport to show the cost of rendering gas service in the city of Lima are divided into two principal divisions. In neither of these are the company's actual operating costs used for but a part of the items of expense.

In the first division of that exhibit (pp. 1-13; 26-31) it was assumed that natural gas had been secured by the company at a cost of 35 cents a thousand cubic feet. This part of the exhibit disregards the fact that the actual cost was and is 55 cents per thousand cubic feet. It was properly ignored by the commission and state court in reaching its decision; and consequently has not been included in the printed record here. In the second division of the exhibit (pp. 14-25) the city presented its evidence as to cost of service when natural gas purchases were taken into account at their actual cost of 55 cents per thousand cubic feet. (R. 582-9).

When adjustment is made to limit the company's expense figures to expenses for the city service alone, the city's evidence as to distribution expense, commercial expense, new business expense, indirect charges to construction, and uncollectible accounts are substantially in accord with that of the company. This appears clearly from the following tables which show for the calendar years 1929, 1930 and 1931 a comparison between the evidence of the company and the city as to such of the items of expense above referred to as were materially reduced in the com-

mission order. Comparative data for the calendar year 1928 is not available from the record because the city only shows the last nine months of that year:

Distribution Expense

Year	Company Exhibit 104, p. 1* (R. 530)	City Exhibit A-3, pp. 22, 23 & 24 (R. 587-9)
1929	$42,047.45	$41,728.45
1930	37,460.04	36,602.29
1931	40,878.89	39,240.83
	Commercial Expense	
1929	$21,881.62	$21,707.67
1930	20,405.83	20,223.84
1931	19,069.56	18,838.48
	New Business Expense	
1929	$13,527.79	$13,420.25
1930	13,561.56	13,440.61
1931	10,923.76	13,457.80

The item of general and miscellaneous expense shown in the city exhibit is substantially below that shown by the company. This difference is due to the elimination in the exhibit of all rate case expenditures and all moneys paid by the company to its parent corporation for services rendered by that company. The city has made no showing whatsoever as to any impropriety in, or lack of necessity for, these expenses. There is none shown in the record. The only justification offered for the disregard of these costs was the bald assertion by its witness, H. R. Allensworth, that "such charges have no proper place in expense accounts upon which the fairness of rates to consumers are to be decided." (R. 454-5). The inaccuracy of Mr. Allensworth's observation as to the law on that matter

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* NOTE: Adjusted to city of Lima service by taking 97.95% of the expense of the Lima district service.

will be hereafter discussed. It should, however, be here pointed out that the company, in order to meet the possible objection that it had failed to show that its parent company was not making an undue profit on services performed for it and had, therefore, failed to comply with the requirement laid down by this court in *Smith v. Illinois Bell Telephone Company,* 282 U. S. 133 (1930), explained fully in the record the nature of, and the necessity for, such services as had been rendered to it by its affiliate, and showed that such of those services as were charged for at all were billed on an actual, or less than actual, cost basis. (R. 350-3, 382-5, 413-6, 424-5). See also: City Exhibit A-1 prepared by Mr. Pringle at the request of the city. (R. 576A).

In the city's Exhibit A-3 federal income tax and Ohio excise tax items were materially reduced through the device of figuring tax payments not on the basis of actual taxes but on the basis of what amounts would have been paid if the revenues of the company had been only such amounts as were necessary to pay the limited operating expenses taken into account by the city and leave the company a five per centum annual return on the commission valuation. Real and personal property taxes were reduced several thousand dollars a year below those shown on the company accounts. The commission found all taxes to be substantially as claimed by the company, and the state court made no change in this finding. In the city exhibit retirement allowance was placed at $35,579.32 per year instead of the $52,539.40* set up by the company. No allowance whatsoever was made for the item of pipe line amortization reserve.

The operating expenses as set forth in City Exhibit A-3 (R. 577-616) are approximately $60,000 a year less

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*Note: This figure is 97.95% of the Lima district figure of $53,639.00.

than those shown by Company Exhibit 104, adjusted as hereinbefore explained, to the city of Lima alone.

The commission submitted no evidence on the subject.

Rate of Return Necessary.

On this subject the company submitted an exhibit in which it showed the actual cost to the company of moneys for capital purposes raised by the issuance and sale of bonds and preferred stocks. (R. 551-2). The issuance of all of these securities were authorized by the commission during or since 1924. The bonds authorized were thirty-year bonds. This exhibit shows that that portion of the capital of the company which has been obtained by the sale of bonds is actually costing the company 7.07% per annum, and that that portion which has been raised by the sale of preferred stock is costing 8% per annum. This exhibit was fully explained by the comptroller of the company, who also testified as to the widely scattered territory in which holders of these securities resided. (R. 389-95, 513-4).

The company also submitted in evidence the commission rate order in cause No. 179, fixing gas rates to be charged by the company in serving consumers in Lima, and entered by the commission on April 25, 1925, wherein the commission found that the rate of return for the company should be at least 7.8% per annum, and that any lower rate would be unreasonable. (R. 521).

The city offered no evidence as to a fair rate of return except the unsupported opinion of its witness H. R. Allensworth that "it is my opinion that the fair rate of return on this property *will be found* to be 5 per cent, or I should say not more than five per cent." (R. 443-5).

The commission submitted no evidence on the subject.

The Value of the Company's Property Used in Serving Consumers in Lima.

The valuation of the property used by the company and useful in rendering gas utility service within the city of Lima has been fixed by the commission as $1,901,696.26 in its final valuation order entered in this cause on January 27, 1932. (R. 82-5). This valuation covers only that portion of the company's property used and useful for service to consumers within the city limits of Lima, and does not include property used and useful for service to consumers residing within the Lima district, but outside the city limits. The amount fixed is the exact sum recommended by the commission's engineering staff, after making eliminations for alleged excess capacity. (R. 627-35, 301). It includes nothing for going value. (R. 303). No appeal having been taken from this order, it was impossible in the rate appeal for the company, under the peculiar provisions of the Ohio law, to challenge in the state courts the insufficiency of the valuation. It is unnecessary, therefore, for us to outline the evidence as to valuation. We desire to point out, however, that we are confident that any analysis of the valuation will clearly show that item after item was given a value less than a reasonable minimum and that the final result reached is a far lower one than can be legally justified. The amount of value allowed cannot be used, as witness Allensworth in his testimony and the commission in its order endeavored to do, as a justification for allowing an unreasonably low rate of return.

The inventory date for all appraisals submitted was March 31, 1928. The company submitted in evidence exhibits showing by years the net amount of capital additions made by the company during each year of its operations to and including 1930. These amounts were determined by subtracting from the total capital expenditures

for each year the capital retirements for such year. (R. 528B). The net capital additions for the Lima district were $17,657.58 for 1928; $50,822.93 for 1929; and $28,125.34 for 1930. These capital additions were ignored by the commission in determining the rate of return that would be earned by the company under the rates fixed.

The trend of costs in the construction of gas properties during the ordinance period was shown by competent evidence. (R. 554A).

THE COMPANY'S NET EARNINGS FROM GAS SERVICE IN LIMA.

The company's revenues, expenses and net earnings from utility operations in the Lima district for the years 1927 to 1931, both inclusive, are shown in the record (R. 529-48) to be as follows:

Year	*Revenue*	*Expenses*	*Net Earnings*
1927	$492,945.07	$404,290.60	$ 88,654.47
1928	511,105.08	391,008.42	120,096.66
1929	511,853.64	411,172.59	100,681.05
1930	491,255.46	389,722.51	101,532.95
1931	457,775.74	377,037.49	80,738.25

When the figures set out in that exhibit are adjusted in the manner hereinbefore described, pp. 13-4, *supra*, so as to reflect the approximate revenues, expenses and net earnings from utility operations within the city of Lima alone, the foregoing table is changed as follows:

Year	*Revenue*	*Expenses*	*Net Earnings*
1927	$482,839.72	$396,002.64	$ 86,837.08
1928	500,627.43	382,992.75	117,634.68
1929	501,360.64	402,743.55	98,617.09
1930	481,184.72	381,733.20	99,451.52
1931	448,391.34	369,308.22	79,083.12

Taking as a rate base the valuation fixed by the commission in this case (without augmentation for net addi-

tion subsequent to 1928), the rate of return earned *under existing rates* during each of the years in question was as follows:

Year	*Property Value*	*Net Earnings*	*Per Centum Rate of Return*
1927	$1,901,696.26	$ 86,837.08	4.5%
1928	1,901,696.26	117,634.68	6.2%
1929	1,901,696.26	98,617.09	5.2%
1930	1,901,696.26	99,451.52	5.2%
1931	1,901,696.26	79,083.12	4.2%

The city offered no exhibit as to the net earnings of the company. Mr. H. R. Allensworth, in preparing City Exhibit A-3 (R. 577-614), assumed net earnings of $94,400.98 or 5% on a property value slightly lower than that fixed by the commission, and "created" a revenue figure sufficient to cover only the operating expenses shown by him and the 5% return. (R. 435-7, 443). In his direct examination, however, witness Allensworth, after discussing the reductions he had made in showing the operating expenses of the company, testified that he thought it apparent from the figures *here* that *at the present rate* charged by the gas company, the company makes a 7% or 8% return on its investment. (R. 455).

The commission introduced no evidence whatsoever as to the net earnings of the company, nor any analysis of any kind as to the company's revenues or expenses.

The Annual Reports of the Company.

The 1927 annual report of the company to the commission, which was introduced in evidence by the city, and the four similar reports for the years 1928 to 1931, both inclusive, which the commission put in evidence on March 8, 1933, are the annual reports for the company as a whole that had been filed pursuant to statutory requirement and

commission order. Among other data applicable to the year reported, they disclose, pursuant to printed instructions in the reports,—the number of customers in each community where artificial gas is supplied, the number of customers in each community where natural gas is supplied, the operating expenses by accounts (combined for the entire company) in connection with the sale of artificial gas, the operating expenses by accounts (combined for the entire company) in connection with the sale of natural gas, interest paid and dividends declared, and an income statement and balance sheet for the company as a whole. In the 1931 report operating expenses for both artificial and natural gas service were combined under one heading. (R. 802-5).

The Commission Order and Opinion.

The rates fixed by the commission in this cause compare with existing charges as follows:

	Existing Rate	*Rate Fixed*	*Percentum Reduction*
400 cubic feet or less per month	$1.25	$1.00	20%
Rate per thousand cubic feet for next 9,600 cubic feet per month	1.05	.95	9.5%
Rate per thousand cubic feet for next 15,000 cubic feet per month	1.00	.75	25%
Rate per thousand cubic feet for all gas over 25,000 cubic feet per month	.75	.75	.....
Penalty per thousand cubic feet for non-payment of bill within ten days after due	.10	.05	50%

The order provides that the rates fixed by the commission therein are to "remain in force and effect for the period fixed and prescribed by said Ordinance." They have, therefore, been made retroactive over the past five years, and for each of the five years without regard to the actual effect of the rates in each such year. The commission further ordered the company to refund to its consumers the difference between amounts collected during the ordinance period and the sums that would have been collected had the company charged the rates fixed by the order.

On the face of the original opinion of the commission accompanying the rate order, there was an error in adding the amounts set forth as the items of operating expense taken into account. The total was stated in the order to be $305,686.88. The amounts listed in fact totaled $301,920.92. This we pointed out in our initial brief to the state court. Thereupon the commission under date of May 19, 1933, without notice to the company and without correcting the mathematical errors that the commission accountants had made in figuring certain of the items themselves (which facts had also been pointed out), entered a *nunc pro tunc* order correcting the error in addition and changing certain statements as to the percentages of return earned under the commission's rate.

The commission opinion, as corrected by the *nunc pro tunc* order, states that operating expenses of the company were considered in an average amount of but $301,920.92 a year for the years 1928 to 1931, both inclusive, and that when operating expenses were limited to that amount the return on the rate base would average 6.65% a year for those four years under the rates fixed. (R. 118-9). The actual operating expenses for such four-year period averaged $384,194.43 a year, p. 15, *supra.*

The commission opinion outlines the method by which the commission had determined the amounts it allowed for distribution expense, commercial expense, and general and miscellaneous expense. That method was the development of customer averages from the annual reports of the company. (R. 93). The opinion gives no clew as to how the commission had reached its conclusion as to revenues or as to net earnings under the rates fixed.

Studies made by the company as to these averages and assumed revenues revealed that they were inaccurately developed and erroneous. The commission and its staff refused any additional information as to the method pursued in working out these items of expense on this alleged return, and consequently it was necessary to fall back upon the laborious process of trial and error in attempting an analysis.

The analysis, however, showed clearly that incorrect customer averages had been used; that a very substantial part of the general and miscellaneous expense items had been overlooked; and that the revenues under the commission rates had been erroneously calculated. These errors were pointed out in our initial brief to the state court. Counsel for the commission admitted certain of the omissions and errors; and, in tables set out in their reply brief, gave the first explanation of how the commission accountants had developed their figures. Upon analysis, these tables revealed further errors that the accounting experts had made.

To avoid useless controversy over pure mistakes of calculation, we then worked out corrected tables with counsel for the commission, and these were set forth in our reply brief. The tables showed the true results obtained by applying the commission theory of expense allowances without the intervention of mathematical errors

and oversights. They also showed the revenue obtained by applying the commission rates to actual gas consumption in Lima for the four-year period.

About seven months after the case was first argued, the state supreme court ordered a reargument. In the meanwhile, the assistant attorney general who had briefed and first argued the case, had resigned. The new assistant, who presented the second argument, later filed a supplemental brief in which he claimed two changes should be made in the expense figures shown in the corrected tables: (a) the "cost of gas sold" should be reduced below the figure in the corrected tables, and (b) rate case expense should be eliminated. There was no basis for claim (a) except a failure to take the time to study Company Exhibit 104 and the facts outlined in our reply brief. That exhibit and statement showed plainly that counsel's claim of reduction was unsupported by fact. As to his second claim, the state supreme court has recognized that his position as to the disallowance of the rate case expense is untenable.

In order that this court may have before it the information as to the nature of these errors and also the evolution of the tables correcting them (the accuracy of which tables may be checked from the figures in the record), those portions of the briefs in the state court that deal with the necessary arithmetical corrections, are reproduced in an appendix to this brief, marked "Appendix A," pp. 165-90, *infra*. We deem this the clearest method of making available to this court the information as to the nature of the errors in calculation, the claims advanced, and the corrections required. The fact that such errors unquestionably exist and affected the commission's action is an important factor to be kept clearly in mind in considering this case.

The information in Appendix A, p. 183A, *infra,* shows clearly that, if the rate case expense be amortized over the ordinance period, the expenses as set forth in the commission's opinion would, except for the fact of erroneous information supplied by its accountants, have been as follows:

Operating Expenses.	*City of Lima Commission Average 1928-1931, both inclusive.*	
Gas Produced and Purchased	$146,574.92	
Distribution Expenses	34,428.00	
Commercial Expenses	19,719.00	
New Business Expenses	5,000.00	
General and Misc. Expenses	45,025.00	
Indirect Charges to Constr.	3,804.00	(Red)
Retirement Allowance	24,518.00	
Real and Personal Prop. Taxes	22,797.25	
State of Ohio—Excise Tax	7,114.25	
Tax of Ohio Pub. Util. Com.	278.25	
Federal Income Tax	8,504.00	
Uncollectible Accounts	2,445.75	
	$312,600.42	

The corrected revenue tabulation shows revenues under the commission rates averaging $416,225.04 per year for the first four years of the ordinance period. (Appendix A, pp. 179A, 183A, *infra*). Subtracting from this the aforementioned $312,600.42 of operating expenses leaves $103,624.62 as the average yearly net earnings for the four years, if the operating expenses ignored by the commission are left out of account.

This is but 5.45% on the rate base instead of the 6.65% which the commission asserted it had allowed.

The rate fixed was to apply throughout all of 1932. Nevertheless in making its order the commission disregarded what the evidence indicated as to the probable earnings in 1932. That evidence disclosed that revenues and net earnings for 1931 were far below an average for the four years 1928 to 1931. (R. 530). The commission had in its files the 1932 annual report of the company which showed clearly that revenues and net earnings were low for 1932. The commission had no hesitancy in using all the other annual reports except the one for 1932. (R. 85, 93). It did not use the one for 1932. It refused to give the company a rehearing so that the company could present evidence of the exact facts as to 1932 earnings. (R. 110-1).

Even if it be assumed that net earnings for 1932 were as high in 1932 as in 1931, the return under the commission rates and the commission theory of determining operating expenses, average but 5.28% per year for the five-year period for which the rates were made effective.

The Judgment and Opinion of the Supreme Court of Ohio.

The purported statement of facts as set forth at the beginning of the court's opinion is taken almost verbatim from the statement of the case as set forth in the initial brief filed by counsel for the commission. But few of the facts alleged therein were supported by any reference to the record and many of the statements are entirely at variance with what the record shows. These misstatements of fact were specifically called to the court's attention in our reply brief and in oral argument. References were given to the record to support each of our claims of misstatement. Counsel for the commission did not debate the fact that their initial statement was inaccurate. Neverthe-

less, the state court in its opinion has adopted that inaccurate statement as its statement of facts. In "Appendix B" to this Brief and Argument, we have outlined the facts of record relating to the more important challenged allegations in the court's statement of facts. (See pp. 191-201, *infra*).

Likewise the statement of issues as set forth in the court's opinion is taken practically verbatim from the statement of issues as set forth in the original brief filed on behalf of the commission. That statement ignores any direct reference to the very essential issue that the rate order is void for lack of due process because not supported by or warranted under the competent evidence in the case.

The court's opinion is premised upon the propositions that the commission should be sustained in the various eliminations of operating expenses that it made; that under such circumstances the rate order allowed the company a return of at least approximately 6% per annum for the rate period; that a 6% annual return for the period from early in 1928 to early in 1933 was sufficient to avoid confiscation; and that, therefore, the commission's order should be upheld. In its conclusion that the rate order of the commission produced a 6% annual return, even after more than $71,500.00 of operating expenses were eliminated, the court completely disregarded the necessary result of correcting admitted errors in calculation.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The assignment of errors contains twenty-seven paragraphs (R. 58-63). These support the basic proposition that the rate order appealed from, and the judgment of the Supreme Court of Ohio upholding that order, deprive the company of its property without due process of law in vio-

lation of section one of the fourteenth amendment to the constitution of the United States.

As heretofore stated, no issue of valuation is involved. The substantive issue is whether the rates fixed by the commission were confiscatory for the ordinance period. The issue as to lack of due process in the proceedings themselves centers around the contentions that the commission improperly used annual reports that were not in evidence, that it ignored the evidence as to operating expenses, that it denied the company a rehearing to which it was entitled as a matter of right, and that the state supreme court did not make that independent judicial review of the law and the facts which due process requires in confiscation cases.

All the errors assigned are to be urged. In the argument they have been discussed under the various broad issues which they support, and they are here summarized under the general headings that will be used in the argument:

The State Supreme Court Erred in Not Holding that the Rate Order was Void because the Commission had Predicated the Order on Matters Not Properly in Evidence.

> *Assignment No.* 4: Error in relying upon annual reports not properly introduced in evidence.

The State Supreme Court Erred in Affirming the Finding and Order of the Commission which fixed Rates upon the Basis of an Arbitrary Disregard of Operating Costs incurred by the Company in Rendering the Service.

> *Assignment No.* 7: Error in disregarding a substantial part of the cost of the gas purchased or produced in connection with rendering the service.

Assignment No. 8: Error in disregarding a substantial part of the distribution costs incurred in rendering the service.

Assignment No. 9: Error in disregarding a substantial part of the commercial costs incurred in rendering the service.

Assignment No. 10: Error in disregarding a substantial part of the new business costs incurred in rendering the service.

Assignment No. 11: Error in disregarding a substantial part of the general and miscellaneous costs incurred in rendering the service.

Assignment No. 12: Error in requiring that rate case expense be amortized over a six-year period.

Assignment No. 13: Error in disregarding the fact of increased excise taxes payable by the company after 1931.

Assignment No. 14: Error in taking into account as an operating expense an inadequate allowance only for retirement reserve.

Assignment No. 15: Error in disregarding entirely as an operating expense any amount for amortization of pipe line.

Assignment No. 16: Error in allocating certain expenses incurred by the company in rendering service.

Assignment No. 22: Error as to burden of proof as to necessity of operating expenses in rendering service.

Assignment No. 23: Error in finding that there was any evidence warranting the elimination of items of operating expense in determining net return.

Assignment No. 24: Error in invading the domain of management and interfering with freedom of ownership to control and operate property used in rendering service.

Assignment No. 25: Error in disregarding, and not according due weight to, competent and credible evidence.

The State Supreme Court Erred in that it Did Not Find that the Commission, in Computing the Return Earned by the Company, Failed to Calculate Accurately what the Revenue of the Company would be for the Ordinance Period either under the Existing Rates or under the Rates Provided in the Rate Order.

Assignment No. 6: Error through failure to calculate accurately the revenues under rates fixed by commission.

Assignment No. 2: Error through failure to determine correctly the earnings under existing rates.

The State Supreme Court Erred in that it Upheld a Rate Order under which the Company would Not have Earned a Compensatory Return. Even Existing Rates Did Not Give the Company a Compensatory Return during the Ordinance Period.

Assignment No. 1: Error in upholding rate for Lima service fixed by commission order.

Assignment No. 2: Error in not finding that company did not obtain a compensatory return even under existing rates.

Assignment No. 19: Error in holding that a return of even less than 6% per annum during the rate period would be adequate.

Assignment No. 20: Error in finding that the rates provided for by the commission order would yield a compensatory return for the rate period.

The State Supreme Court Erred in Not Finding that the Validity of the Rate Order must be Determined by its Effect on Net Earnings from Year to Year; and that the Rate Order and the Order to Refund were Invalid because this Requirement had not been Complied with.

Assignment No. 17: Error in not considering downward trend of revenues and net earnings, and the effect during 1932 of the rates fixed.

Assignment No. 18: Error in not determining for each year of the rate period whether the net earnings would be sufficient to avoid confiscation.

Assignment No. 21: Error in not determining for each year of the rate period what return would be required to avoid confiscation.

Assignment No. 3: Error in upholding order to make refund of the difference between the existing rates and those provided by the rate order.

The State Supreme Court Erred in Not Holding that the Rate Order is Invalid because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.

Assignment No. 5: Error in refusing company an opportunity to put its 1932 annual report in evidence.

Assignment No. 27: Error in refusing company an opportunity to show actual effect of rate order as applied to all years, and especially 1932, and subsequently.

The State Supreme Court Did Not Make that Independent Judicial Review of the Law and the Facts which Due Process and Equal Protection of the Laws Require.

Assignment No. 26: Error in failing to make an independent review of the law applicable to, and the facts in, this case.

SUMMARY OF ARGUMENT.

I.

A Review of the Record by this Court will Disclose that the Decision of the Commission and of the State Supreme Court Disregards Controlling Legal Principles.

The commission rate order is premised upon elaborate calculations which were indulged in by the commission and which are "at war with realities." These cannot furnish an excuse for disregarding the true costs of rendering the service and the actual facts as to the inadequacy of the return.

Lindheimer v. Illinois Bell Telephone Co., 292 U. S. 151, 163-4 (1934).

II.

The State Supreme Court Erred in Not Holding that the Rate Order was Void because the Commission had Predicated the Order on Matters Not Properly in Evidence.

There has been a denial of due process of law to the company through the action of the commission in placing in evidence, *after the termination of hearings in the cause,* certain annual reports of the company, and then refusing the company any opportunity to meet any issues that might be created through the use of the reports. The record shows that the reports were ordered in evidence by the commission long after the hearings closed. This was done by an order dated three days before the rate order was entered, but not served on the company until *after* the rate order had been served on it. The commission refused the company an opportunity to explain, clarify or show the make-up of the figures and information in the reports

which the commission attempted to use as a basis for its ignoring of tens of thousands of dollars of operating expense. The figures and information were misused and misapplied by the commission. Such misapplication is the sole basis of any support for the elimination of much of the actual operating expenses that have been disregarded by the commission.

The law is clear that under the circumstances as above outlined, the reports are not properly in evidence and any attempted use thereof in the case is a denial of due process of law, rendering the order void.

United States v. Abilene & Southern Railway Company, 265 U. S. 274, 286-290 (1924).

Interstate Commerce Commission v. Louisville and Nashville Railroad Company, 227 U. S. 88, 91-4 (1913).

The Chicago Junction Case, 264 U. S. 258, 262-6 (1924).

Northern Pacific Railway Company v. Department of Public Works, 268 U. S. 39, 44-5 (1925).

Washington ex rel. Oregon R. R. & N. Co. v. Fairchild, 224 U. S. 510, 524-5 (1912).

Crowell v. Benson, 285 U. S. 22, 48 (1932).

Ohio Utilities Company v. Public Utilities Commission of Ohio, 267 U. S. 359 (1925).

III.

The State Supreme Court Erred in Affirming the Finding and Order of the Commission which fixed Rates upon the Basis of an Arbitrary Disregard of Operating Costs incurred by the Company in Rendering the Service.

The commission ignored to the extent of more than $71,500.00 a year the actual operating costs incurred by the company in rendering gas utility service to consumers

in Lima. The amount ignored is nearly 20% of the entire cost of the service. In refusing to hold that this action of the commission was illegal the state court has closed its eyes to the record.

The items of expense disregarded by the commission are of two classes,—first, those that represent actual out-of-pocket expenditures made during the period in the rendering of the service; and secondly, those for depreciation and amortization reserve which are partly actually expended for replacements within the period, and partly carried in a reserve account to protect the integrity of the investment.

The average amount of the former which the commission has disregarded is about $20,500.00 annually, if rate case expense be taken into account. This disregard of actual costs increased the apparent net return on the rate base by about 1.1% per year. When these costs are added to those used by the commission, the average net earnings of the company for the four years, 1928 to 1931, both inclusive, would be but 4.35% per annum under the commission rates.

In the latter group the average amount disregarded is $51,000.00 annually. This disregard of expense of operation increased the apparent net return on the rate base by an additional percentage of more than 2½% per year. When this additional amount is considered, average earnings for the four-year period would be less than 2% per annum under the commission rates.

In reference to the first mentioned group of expenses, the sound rule and the one uniformly laid down by the decisions is that, where payments to an affiliated company are not involved, the costs that have been actually incurred in rendering the service can not be disregarded in fixing rates unless an abuse of managerial discretion or mismanagement or fraud in making the expenditures is shown.

The state court has departed from this long established principle.

Interstate Commerce Commission v. Chicago Great Western Railway Company, 209 U. S. 108, 119-120 (1908).

Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri, 262 U. S. 276, 288-9, 290 (1923).

Banton v. Belt Line Railway Corp., 268 U. S. 413, 421-2 (1925).

Atchison, Topeka & Santa Fe Railway Co. v. United States, 284 U. S. 248, 262 (1932).

Brooklyn Borough Gas Co. v. Prendergast, 16 F. (2d) 615, 623 (1926).

Citizens' Gas Co. of Hannibal v. Public Service Commission of Missouri, 8 F. (2d) 632, 634 (1925).

New York & Richmond Gas Co. v. Prendergast, 10 F. (2d) 167, 181 (1925).

Chesapeake & Potomac Tel. Co. v. Manning, 186 U. S. 238, 248 (1902).

Public Utilities Commission v. Springfield Gas and Electric Co., 291 Ill. 209, 234 (1919).

People ex rel. D. & H. Co. v. Stevens, 197 N. Y. 1, 10 (1909).

Columbus Gas Light Company v. Public Service Commission of Indiana, 193 Ind. 399, 404 (1923).

Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Commission, 11 F. (2d) 319, 325 (1926).

Denver Union Stock Yard Co. v. United States, 57 F. (2d) 735, 747-749 (1932).

Re Milwaukee Electric Railway & Light Co., P. U. R. 1931E 289, 296 (1931).

Recent decisions of this court holding that the foregoing rule does not apply where transactions with an affiliated company are involved, do not render the rule inapplicable to this first class of expense items disregarded in the case at bar.

Smith v. Illinois Bell Telephone Company, 282 U. S. 133, 151 (1930).

Western Distributing Co. v. Public Service Commission of Kansas, 285 U. S. 119 (1932).

Dayton Power & Light Co. v. Public Utilities Commission of Ohio, 292 U. S. 290 (1934).

Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 292 U. S. 398 (1934).

The commission improperly eliminated from operating expenses a part of the cost of gas produced and purchased in connection with gas service in Lima, such amount representing approximately $19,000.00 for the rate period.

Brooklyn Union Gas Co. v. Prendergast, 7 F. (2d) 628, 652, 671 (1925).

14 *Proceedings Pacific Gas Association* 124 (1922).

14 *Proceedings Pacific Gas Association* 679 (1923).

15 *Proceedings Pacific Gas Association* 387 (1924).

Brown's Directory of American Gas Companies.

The commission has acted illegally in reducing by approximately $36,500.00 the distribution and commercial expenses incurred by the company in serving gas to consumers in Lima. As a means of accomplishing this reduction, the commission attempted to allocate expenses that were direct expenses incurred in Lima and that did not involve any problem of allocation whatsoever. This is improper. The attempted reduction in these costs has not a vestige of any support except through the misuse made

by the commission of data contained in the annual reports unlawfully relied upon by it.

Wabash Valley Electric Co. v. Young, 287 U. S. 488 (1933).

Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 292 U. S. 398 (1934).

Northern Pacific Railway Company v. North Dakota ex rel., 236 U. S. 585, 597 (1915).

Banton v. Belt Line Railway Corp., 268 U. S. 413, 421 (1925).

Northern Pacific Railway Company v. Department of Public Works, 268 U. S. 39, 42-4 (1925).

The Minnesota Rate Cases, 230 U. S. 352, 437 (1913).

The commission cannot lawfully ignore actual costs and actual net return, or create a fictitious basis for a reduction of rates by taking into account estimated expenses and assumed earnings for past periods.

Wisconsin-Minnesota Light & Power Company v. Railroad Commission of Wisconsin, 183 Wis. 104, 105-6 (1924).

The commission arbitrarily disregarded nearly 60%, or about $35,000.00, of the expense incurred by the company during the rate period in securing new business and in retaining its existing business in Lima. The state court closed its eyes to the record when it approved this action of the commission.

Ohio Utilities Company v. Public Utilities Commission of Ohio, 267 U. S. 359, 363 (1925).

Consolidated Gas Co. v. Newton, 267 Fed. 231; 253 (1920).

Brooklyn Borough Gas Co. v. Prendergast, 16 F. (2d) 615, 623 (1926).

Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Commission, 11 F. (2d) 319, 325 (1926).

Citizens' Gas Co. of Hannibal v. Public Service Commission of Missouri, 8 F. (2d) 632, 634 (1925).

New York & Richmond Gas Co. v. Prendergast, 10 F. (2d) 167, 181 (1925).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 249 (1930).

The commission improperly determined the amount of the general and miscellaneous expense of the company in rendering gas utility service in Lima. It arbitrarily allocated the direct general expense; it used an untenable basis of allocation for joint general expense; and it overlooked a substantial part of the general expense. The result was that about $12,500.00 of such expense was disregarded even if rate case expense be taken into account. If the state court had made an independent review of the record it would have found that there was nothing in the record to support the commission's action in reference to this item of expense.

See Argument.

The failure of the commission to take into account as an additional operating expense the increased excise tax which the company has been required to pay the state of Ohio subsequent to 1931, was erroneous. Such failure contributed to the finding of a net return in excess of the true net return earned by the company. The state court should have ruled that the commission's treatment of this expense was improper.

See Argument.

Before coming to the question of net return at all, the company is entitled to deduct from its revenues for each year, as an operating expense item, an adequate allowance for retirement reserve. In fixing this allowance the commission must be governed by the facts as shown by the evidence and cannot fix the amount at a purely arbitrary figure.

Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 292 U. S. 398 (1934).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 254 (1930).

City of Knoxville v. Knoxville Water Company, 212 U. S. 1, 13-4 (1909).

Mobile Gas Co. v. Patterson, 293 Fed. 208, 223-4 (1923).

The rate of retirement reserve claimed by the company was the rate allowed the company by this commission in several previous rate orders affecting the company. The facts in the record show the rate to be reasonable.

In re West Ohio Gas Company, 22 Ohio D. R. 121 (1925).

In re West Ohio Gas Company, 24 Ohio D. R. 527 (1926).

In re West Ohio Gas Company, 24 Ohio D. R. 535 (1926).

In re Lima Natural Gas Company, Commission Cause No. 2360.

Annual allowances at approximately the rate claimed by the company and at even higher rates frequently have been held fair and reasonable by courts, commissions and other authorities.

City of Belleville v. St. Clair County Gas & Electric Company, P. U. R. 1915F 235 (3%).

City of Winona v. Wisconsin-Minnesota Light & Power Co., 276 Fed. 996 (1921) (2½%).

City of Bellingham v. Puget Sound Power & Light Company, P. U. R. 1921E 5 (3½%).

Mobile Gas Co. v. Patterson, 293 Fed. 208 (1923) (2½% on cost new).

Re Jackson County Light, Heat & Power Company, P. U. R. 1926D 737 (2.75%).

City of Manitowoc v. Wisconsin Fuel & Light Company, P. U. R. 1927D 737 (3%).

Wichita Gas Company v. The Public Service Commission, 126 Kan. 220 (1928) (3%).

Fort Worth Gas Co. v. City of Fort Worth, 35 F. (2d) 743 (1929) (3.6%).

Saliers, "Depreciation, Principles and Application," (1923) pp. 537-9.

Depreciation Studies, Preliminary Report of the Bureau of Internal Revenue, Treasury Department, January, 1931, pp. 1-2, 29, 33.

In any event the commission could not in the light of the facts as shown by the record in this case lawfully fix a retirement reserve allowance in an amount less than the $35,579.32 advocated by the witness for Lima.

Pacific Gas & Electric Company v. San Francisco, 265 U. S. 403, 423 (1924).

Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 292 U. S. 398 (1934).

The action of the commission in eliminating from operating expenses the amount that the company has heretofore been authorized by it to set up in a reserve for amortization of the company's investment in its gas transmission main, is unwarranted and inequitable in the light

of the facts shown in this case and the treatment by the commission in its valuation of the company's property of the item of investment in the gas mains.

Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 292 U. S. 398 (1934).

IV.

The State Supreme Court Erred in that it Did Not Find that the Commission, in Computing the Return Earned by the Company, Failed to Calculate Accurately what the Revenue of the Company would be for the Ordinance Period either under the Existing Rates or under the Rates Provided in the Rate Order.

The commission based its order in this case upon an assumption that under existing rates the company obtained from gas utility service in Lima during the ordinance period an average annual revenue of approximately $483,000.00. This assumption does not accord with the facts shown by the evidence.

The commission predicated its rate order upon erroneous and excessive calculations as to the revenues that the company would have received during the ordinance period under the rates fixed.

See Argument.

V.

The State Supreme Court Erred in that it Upheld a Rate Order under which the Company would Not have Earned a Compensatory Return. To Avoid Confiscation an Annual Return Greatly in Excess of the Return that would have been Earned under the Commission Rates must be Allowed. Even Existing Rates Did Not Give the Company a Compensatory Return during the Ordinance Period.

The return that the company would receive for the ordinance period under the commission rates is confiscatory,

even if operating expenses be disregarded to the extent attempted by the commission. When actual operating expenses, which were unlawfully disregarded by the commission, are taken into account it is found that the true return is destructively inadequate.

See tables presented in Argument.

In determining a compensatory return it is essential to consider the actual effect of the rates imposed in the light of the utility's situation, its requirements and opportunities.

Smith v. Illinois Bell Telephone Company, 282 U. S. 133, 160 (1930).

Lindheimer v. Illinois Bell Telephone Co., 292 U. S. 151 (1934).

Wabash Valley Electric Co. v. Young, 287 U. S. 488, 501-2 (1933).

Los Angeles Gas & Electric Corp. v. Railroad Commission of California, 289 U. S. 287, 319-20 (1933).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 249-252 (1930).

Bluefield Company v. Public Service Commission, 262 U. S. 679, 692-5 (1923).

Ohio Associated Telephone Co. v. Geiger, 3 F. Supp. 997, 1004 (1933).

The evidence establishes that capital obtained by the company from the sale of bonds costs 7.07% per annum and that capital secured by preferred stock sales costs 8% per annum. These securities were issued under authorization by the commission given less than three and one-half years before the effective date of the rates here challenged. The past experience of companies rendering gas utility service in Lima did not enable this company to attract investors at low rates.

City of Lima v. The Public Utilities Commission, 106 Oh. St. 379 (1922).

City of Lima v. The Public Service Commission, 103 Oh. St. 501 (1921).

A public utility is entitled to a return at a higher rate than the mere cost of borrowed moneys.

McCardle v. Indianapolis Water Company, 272 U. S. 400, 419 (1926).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 251-2 (1930).

The return that a utility should be allowed an opportunity to earn must be sufficient to secure confidence in the financial soundness of the utility and enable it to support and maintain its credit.

Bluefield Company v. Public Service Commission, 262 U. S. 679, 693-5 (1923).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 249-252 (1930).

Wichita Gas Co. v. Public Service Commission of Kansas, 2 F. Supp. 792 (1933).

The essentialness of keeping fully in view the actualities of the situation in the specific case being presented, has been recently stressed again in this court.

Lindheimer v. Illinois Bell Telephone Co., 292 U. S. 151 (1934).

In giving weight to present general economic conditions the state court and the commission both lost sight of the fact that the rates in issue were being fixed for the years 1928, 1929 and 1930 as well as for 1931 and 1932.

See Argument.

Numerous decisions, many of them covering rates attempted to be fixed for at least a part of the period covered by the rate ordinance in the case at bar and involving utilities larger, and with opportunities to secure money upon terms decidedly better than those which the company in this case could possibly have, are to the effect that the return allowed should be 7½% or 8% if confiscation is to be avoided.

Wichita Gas Co. v. Public Service Commission of Kansas, 2 F. Supp. 792, 810 (1933) (8%).

Denver Union Stock Yard Co. v. United States, 57 F. (2d) 735, 745, 754 (1932) (7½%).

United Fuel Gas Co. v. Public Service Commission of West Virginia, 14 F. (2d) 209, 212 (1926); aff. 278 U. S. 322 (1929) (8%).

New York Telephone Co. v. Prendergast, 36 F. (2d) 54, 67-9 (1929) (7% for telephone companies is proper even though gas and electric companies entitled to 8%).

Interborough Rapid Transit Co. v. Gilchrist, 26 F. (2d) 912, 924-5 (1928) (8%).

Brooklyn Borough Gas Co. v. Prendergast, 16 F. (2d) 615, 622, 638 (1926) (8%).

Kings County Lighting Co. v. Prendergast, 7 F. (2d) 192, 194-5, 218; aff. 272 U. S. 579 (1926) (8%).

New York & Richmond Gas Co. v. Prendergast, 10 F. (2d) 167, 186-7 (1925) (8%).

Southern Bell Tel. & Tel. Co. v. Railroad Commission of South Carolina, 5 F. (2d) 77, 88-89 (1925) (8%).

Brooklyn Union Gas Co. v. Prendergast, 7 F. (2d) 628, 672 (1925) (8%).

Consolidated Gas Co. of New York v. Prendergast, 6 F. (2d) 243, 273-4, 280 (1925) (8%).

Springfield Gas & Electric Co. v. Public Service Commission of Missouri, 10 F. (2d) 252, 255 (1925) (8%).

New York & Queens Gas Co. v. Prendergast, 1 F. (2d) 351, 370 (1924) (8%).

New York Telephone Co. v. Prendergast, 300 Fed. 822, 826 (1924) (8%).

City of Minneapolis v. Rand, 285 Fed. 818, 830 (1923) (7½%).

Mobile Gas Co. v. Patterson, 293 Fed. 208, 221 (1923) (8%).

Southwestern Bell Telephone Co. v. City of Ft. Smith, 294 Fed. 102, 108 (1923) (8%).

Brush Electric Company v. City of Galveston, 262 U. S. 443, 445 (1923) (8%).

Galveston Electric Company v. City of Galveston, 258 U. S. 388, 400 (1922) (8%).

Lincoln Gas & Electric Light Company v. City of Lincoln, 250 U. S. 256, 267 (1919) (7% to 8%).

VI.

The State Supreme Court Erred in Not Finding that the Validity of the Rate Order must be Determined by its Effect on Net Earnings from Year to Year; and that the Rate Order and the Order to Refund were Invalid because this Requirement had not been Complied with.

A commission order fixing rates for a period that is past is not enforceable except as to such years of the past period during which the utility would have earned a compensatory return under such rates. A rate order is from year to year valid or invalid depending upon whether under it confiscation results at such time.

Galveston Electric Company v. City of Galveston, 258 U. S. 388, 400-1 (1922).

Banton v. Belt Line Railway Corp., 268 U. S. 413, 418 (1925).

City of Knoxville v. Knoxville Water Company, 212 U. S. 1, 19 (1909).

Lincoln Gas & Electric Light Company v. City of Lincoln, 250 U. S. 256, 268 (1919).

Willcox v. Consolidated Gas Company, 212 U. S. 19, 54-55 (1909).

Brush Electric Company v. City of Galveston, 262 U. S. 443, 446 (1923).

Smith v. Illinois Bell Telephone Company, 282 U. S. 133, 162 (1930).

Ohio Associated Telephone Co. v. Geiger, 3 F. Supp. 997, 1004 (1933).

The refusal of the commission to take into account the situation as to 1932 renders the order void as applied to that year.

Atchison, Topeka & Santa Fe Railway Co. v. United States, 284 U. S. 248 (1932).

Dayton Power & Light Co. v. Public Utilities Commission of Ohio, 292 U. S. 290 (1934).

The refund order is likewise invalid as applied to the past years because of the failure of the commission to observe this principle.

See Argument.

VII.

The State Supreme Court Erred in Not Holding that the Rate Order is Invalid because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.

The commission arbitrarily denied the company an opportunity to show on rehearing the results of its opera-

tions in Lima during 1932 and the first part of 1933. Such denial constitutes reversible error.

Atchison, Topeka & Santa Fe Railway Co. v. United States, 284 U. S. 248, 260-2 (1932).

The introduction by the commission, after the termination of the hearings, of the company's annual reports for the years 1928, 1929, 1930 and 1931, its refusal to give the company an opportunity to be heard in reference to these reports, and its refusal to include the 1932 report, constitute reversible error.

See Argument.

VIII.

The State Supreme Court Did Not Make that Independent Judicial Review of the Law and the Facts which Due Process and Equal Protection of the Laws Require.

The judicial inquiry into the commission's order to which the company was entitled on its appeal to the state court was an independent review of both the facts and the law. The fourteenth amendment of the federal constitution guarantees the company such a judicial investigation of the validity of the order. This fundamental right was not afforded the company by the state supreme court.

Atchison, Topeka & Santa Fe Railway Co. v. United States, 284 U. S. 248, 262 (1932).

Ohio Valley Water Company v. Ben Avon Borough, 253 U. S. 287, 289 (1920).

Ohio Utilities Company v. Public Utilities Commission of Ohio, 267 U. S. 359, 364 (1925).

State Corporation Commission of Kansas v. Wichita Gas Co., 290 U. S. 561, 569 (1934).

Bluefield Company v. Public Service Commission, 262 U. S. 679, 689 (1923).

Prendergast v. New York Telephone Company, 262 U. S. 43, 50 (1923).

Lehigh Valley R. R. v. Commissioners, 278 U. S. 24, 36 (1928).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 251 (1930).

Crowell v. Benson, 285 U. S. 22, 60 (1932).

Van Wert Gaslight Co. v. Public Utilities Commission of Ohio, 299 Fed. 670, 676 (1924).

Chesapeake & Potomac Telephone Company of Baltimore v. West, 7 F. Supp. 214, 230 (1934).

ARGUMENT.

I.

A Review of the Record by this Court will Disclose that the Decision of the Commission and of the State Supreme Court Disregards Controlling Legal Principles.

The commission rate order is based upon the alleged fact that under existing rates the company would have made a return on the rate base of 9.52% per annum during the rate period, and that such a rate of return would be excessive. To support the premise, elaborate calculations are indulged in by the commission. The record abundantly proves that these are "at war with realities." As this court has recently had occasion to point out, the actual experience of a company is more convincing than tabulations of estimates.*

The company commenced its operations December 1, 1924, barely three years before the passage of the rate ordinance in question. In April, 1925, its rates were fixed by the commission. At the end of 1931 its book surplus account built up under existing rates was only $67,601.83. (R. 786). Among its assets were deferred charges of $57,798.33. (R. 785). Of these deferred charges $31,545.37 covered rate case expenses in connection with this rate case. (R. 542). The record does not show the nature of the other deferred charges. If one deducts from the book surplus merely the deferred rate charges in the Lima case, the surplus accumulated in more than seven years of operation is but $36,056.46. Common stock dividends paid were never in any year as much as 4%, and

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* NOTE: *Lindheimer v. Illinois Bell Telephone Co.*, 292 U. S. 151, 163-4 (1934).

during the first three years of the company's operations no dividends were paid on common stock. (R. 553-4). The commission refused to put in evidence the company's last annual report to it, which shows the fact that at the end of 1932 the corporate surplus was less than at the end of 1931, and that in 1932 no common stock dividends were paid. The situation has not improved since 1932. While the fact is not of record in these proceedings, it is a matter of public record that, as an outgrowth of this rate litigation, the company is involved in proceedings for reorganization under the recently enacted Sections 77A and 77B of the federal bankruptcy act. (*In the Matter of West Ohio Gas Company, Debtor*—In Proceedings for Reorganization No. 10893 in the District Court of the United States for the Northern District of Ohio, Western Division.)

In spite of these startling realities as to lack of adequate earnings by the company, the commission has ordered the company to lower its rates for the past five years to an extent that would require refunds to consumers in one community which will total more than $330,000.00, exclusive of interest. The foregoing facts alone indicate clearly not only that the commission order is unreasonable under the regulatory statute, but that under the order the property of the company would be confiscated for the public service. They also show that the commission action in fixing rates in this case has not been based upon the controlling legal principles which must be followed if the company is to be afforded due process of law as guaranteed by the constitution of the United States.

A study of the entire record impels one to the conclusion that the commission set about to fix a lowered rate in this case, regardless of its right under the law and the evidence so to do. As will be specifically pointed out, its action was arbitrary and wholly at variance with the evidence; and its findings are in numerous instances unsup-

ported by and contrary to the evidence, or are based on data not properly put in evidence, or are the result of errors in arithmetic. If the rate order be permitted to stand, the property of the company devoted to the public service will have been taken without adequate compensation. And the Supreme Court of Ohio has not made that independent review of the law and the facts which is essential if due process is to be afforded the company.

The commission, after revising its original order by a *nunc pro tunc* order entered without notice to the company, found that the company would have, under the rates fixed by the commission, an annual return of approximately 6.65%. (R. 118-22).

In order to reach this conclusion, it was necessary for the commission to disregard more than 21% of the actual expenses of operation; to assume that earnings for 1932 and the first four months of 1933 would be at a rate equivalent to the *average* for the preceding four years; and to proceed upon errors made by its accountants in calculating revenues and customer averages and in overlooking part of the expense accounts, which errors misled the commission by 1.2% as to the actual percentage of return that would be derived per year. When these clearly demonstrated errors of the accountants are corrected, and rate case expense is taken into account and spread over the ordinance period, the return earned by the company under the commission rates (even after eliminating for each annual period the more than $71,500.00 of operating expense that were excluded by the commission) would average less than 5½% for the first four years of the ordinance period, and but about 5¼% for the whole ordinance period. (See Appendix A, pp. 176-84, *infra*).

That the return, even on the commission's theory of the case, is in fact reduced to such percentages, is a mere

matter of mathematical calculations. This fact was not only demonstrated plainly to the state court, but the assistant attorney general, who was counsel for the commission when the case was briefed and first argued, admitted both the errors of the commission's accountants and the necessity of allowing rate case expense; and, in order to avoid needless discussion and confusion as to these errors, worked out with counsel for the company tables in which these errors were eliminated. These show the figures obtained by applying with mathematical correctness the theories expounded in the commission order. (See Appendix A, pp. 179A, 181A, 183A, *infra*). Determination for oneself of the accuracy of these tables requires only the time necessary to check the data set forth in the exhibits in the record. These corrected tables were submitted to the state court. They were discussed on the reargument of the case. The fallacy of a claim made at that time by the newly appointed assistant attorney general as to the amount of the item of "Cost of Gas Produced and Purchased" was abundantly exposed. (Appendix A, pp. 189-90, *infra.*) It seems incredible, but it is a fact that, even after these numerous errors of the commission in making its calculations had been so plainly pointed out to the state court and tabulated for it, that court handed down an opinion in which it upheld the commission's order, relied upon the discredited figures used by the commission, and insisted that the commission's rates would produce a 6% return for the rate period. The court's opinion discloses irrefutably that the court did not give consideration to the facts of the case, and paid no attention to the briefs that were filed except to cull out of the briefs for the commission such of the statements (many of which have been recognized as erroneous by their counsel) as, however incorrect, would serve to lend color to a decision that

the commission's order should be affirmed upon the ground that it gave the company a 6% annual return for the rate period.

We think this court should keep these factors in mind throughout its consideration of this case. We submit that it is self-evident that the state court has not given the company that independent review of the law and the facts which due process requires. In this situation we submit this court should either afford the company that independent judicial review of the facts and the law to which it is entitled or remand the case and direct the state court so to do.

We shall discuss the numerous errors in this case under the general headings which have been set forth under the "Specification of Assigned Errors Intended to Be Urged," pp. 29-33, *supra.*

II.

The State Supreme Court Erred in Not Holding that the Rate Order was Void because the Commission had Predicated the Order on Matters Not Properly in Evidence.

In order to build up the appearance that a large net return was being earned by the company from Lima service, the commission made heavy reductions in most of the items of operating costs actually incurred by the company. To give any color to many of these attempted eliminations, it was necessary for the commission to rely upon annual reports of the company that were not a part of the evidence in the case. These annual reports were documents that had been filed by the company with the commission under the requirements of the state law. The information contained therein was set forth in such form as the law and commission regulations required. After the hearings had ended, the commission arbitrarily put in

evidence these reports for the years 1928, 1929, 1930 and 1931, and refused the company an opportunity to be heard in reference to them.

Hearings in the rate case were closed on July 19, 1932. The rate order was not entered until March 10, 1933, almost eight months later. We do not, of course, know just when the idea of using the reports was conceived by the commission, but we do know that the first information that the company had on the subject was *after* it had been notified of the final rate order. The commission, after serving upon the company a copy of the rate order, served the company with a copy of an order, dated March 8, 1933 (two days earlier), which made the four annual reports a part of the record. (R. 85). The company promptly asked for a rehearing. This the commission denied. (R. 117).

We do not claim that certain of the data in the reports would not have been competent evidence if the commission desired to introduce it in the proper manner during the hearings. Likewise, we do not deny that the commission could have reopened the case at any time after July 19, 1932 and introduced such parts of the reports as were competent, if it had at such time afforded the company a reasonable opportunity to object to the incompetent parts, to explain the data therein, to show the proper deductions that could be drawn from the competent data intro uced, and to offer any additional evidence that it might then have deemed needed. Even if such opportunity had been given when suitably requested by petition for rehearing, the company would not now be urging error.

Nothing like that was done. Sometime during the eight months that elapsed between the termination of the hearings and the issuance of the rate order, the commission decided upon the scheme of reducing actual operating costs

by means of customer averages that it could develop from data in the annual reports. Its opinion shows that its decision as to its allowances for several important items of expense was predicated solely upon the use of such data. (R. 93). From its order dated March 8, 1933, putting the reports in the record, it is clear that the commission was aware that it could not lawfully rely upon them unless they were in evidence. Yet it did not notify the company of this additional evidence until after it had entered its final order and it then denied the company any opportunity to be heard in respect to that evidence.

Such a denial of the most fundamental rights of a litigant has never been countenanced by this court. Uniformly this court has set aside administrative orders predicated on such a disregard of rights. The decisions here are clear and harmonious. They hold that a failure to observe this basic requirement necessitates a reversal of the order upon the ground that due process has been denied.

In *United States v. Abilene & Southern Railway Company*, 265 U. S. 274 (1924), a case particularly significant here because of the action of the commission in reference to the annual reports of the company, this court, in holding a legislative order void because of failure to observe the principle heretofore discussed, said, pages 286-290:

> "The plaintiffs contend that the order is void because it rests upon evidence not legally before the Commission. It is conceded that the finding rests, in part, upon data taken from the annual reports filed with the Commission by the plaintiff carriers pursuant to law; that these reports were not formally put in evidence; that the parts containing the data relied upon were not put in evidence through excerpts; that attention was not otherwise specifically called to them; and that objection to the

use of the reports, under these circumstances, was seasonably made by the carriers and was insisted upon. * * *

"* * * a finding without evidence is beyond the power of the Commission. Papers in the Commission's files are not always evidence in a case. *New England Divisions Case,* 261 U. S. 184, 198, note 19. Nothing can be treated as evidence which is not introduced as such. *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.,* 227 U. S. 88, 91, 93; *Chicago Junction Case,* 264 U. S. 258. * * *

"* * * The objection to the use of the data contained in the annual reports is not lack of authenticity or untrustworthiness. It is that the carriers were left without notice of the evidence with which they were, in fact, confronted, as later disclosed by the finding made. The requirement that in an adversary proceeding specific reference be made, is essential to the preservation of the substantial rights of the parties.

"* * * The matter improperly treated as evidence may have been an important factor in the conclusions reached by the Commission. The order must, therefore, be held void."

And in the case at bar it is clear from the opinion of the commission that the reports which were improperly treated as evidence not only might have been but in fact were the foundation for conclusions reached by the commission.

Interstate Commerce Commission v. Louisville and Nashville Railroad Company, 227 U. S. 88 (1913), involved a commission order revising certain rates. In the appeals to the courts, the direct issue was presented whether the commission could lawfully base its order on an asserted "opinion" not founded upon the evidence in the case. In the appeal here, this court held that the commission could not do so. It said, pages 91-4:

"In such case it (the government) insisted that the order based on such opinion is conclusive, and (though *Int. Com. Comm. v. Union Pacific R. R.*, 222 U. S. 541, 547, was to the contrary) could not be set aside, even if the finding was wholly without substantial evidence to support it.

"1. But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; *is inconsistent with rational justice, and comes under the Constitution's condemnation* of all arbitrary exercise of power.

* * *

"The Government further insists that the Commerce Act (36 Stat. 743) requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created, and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of section 12 may be used as basis for instituting prosecutions for

violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The Commission is an administrative body and, even where it acts in a quasi-judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. *Int. Com. Comm. v. Baird,* 194 U. S. 25. *But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown but presumptively sufficient information to support the finding. United States v. Baltimore & Ohio S. W. R. R.,* 226 U. S. 14."

In *The Chicago Junction Case,* 264 U. S. 258 (1924), the court said, pages 262-6:

> "Facts conceivably known to the Commission but not put in evidence will not support an order. *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.,* 227 U. S. 88, 93. • • •
>
> "Upon application of a carrier, the Commission must form a judgment whether the acquisition proposed will be in the public interest. It may form this judgment only after hearing. *The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance*

> *with it.* To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action. As it was admitted by the motion that the order was unsupported by evidence, and since such an order is void, there is no occasion to consider the other grounds of invalidity asserted by plaintiffs."

A hearing by the commission on appeals from rate ordinances is required under the Ohio law. (General Code of Ohio, section 614-44.)

In *Northern Pacific Railway Company v. Department of Public Works,* 268 U. S. 39 (1925), this court reiterated the principle in the following language, pages 44-5:

> "But where rates found by a regulatory body to be compensatory are attacked as being confiscatory, courts may enquire into the method by which its conclusion was reached. An order based upon a finding made without evidence, *The Chicago Junction Case,* 264 U. S. 258, 263, or upon a finding made upon evidence which clearly does not support it, *Interstate Commerce Commission v. Union Pacific R. R.,* 222 U. S. 541, 547, is an arbitrary act against which courts afford relief. The error under discussion was of this character. It was a denial of due process. Compare *New York & Queens Gas Co. v. McCall,* 245 U. S. 345, 348."

In *Washington ex rel. Oregon R. R. & N. Co. v. Fairchild,* 224 U. S. 510 (1912), this court said, pages 524-5:

> "• • • the hearing which must precede the taking of property is not a mere form. The carrier must have the right to secure and present evidence material to the issue under investigation. It must be given the opportunity by proof and argument to controvert the claim asserted against it before a tribunal *bound* not only to listen but to *give legal effect to what has been established.*"

And in *Crowell v. Benson*, 285 U. S. 22 (1932), this court recently reaffirmed its adherence to this principle. It there held, page 48:

> "Facts conceivably known to the deputy commissioner, but not put in evidence so as to permit scrutiny and contest, will not support a compensation order. *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88, 93; *The Chicago Junction Case*, 264 U. S. 258, 263; *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, 288."

And commission findings as to valuation and operating expenses were held erroneous under this principle, in *Ohio Utilities Company v. Public Utilities Commission of Ohio*, 267 U. S. 359 (1925), a case coming up from the Supreme Court of Ohio.

All the foregoing decisions were called to the attention of the state court, and the excerpts above quoted set out in the briefs filed there. The state court wholly failed to give the company protection against this arbitrary action of the commission, or to pay any attention to the issue. Surely the rights of a litigant cannot be thus blindly cast aside. We are confident that this court will not show a like disregard for these fundamental rights. We respectfully submit that for the reasons just discussed, if for no other, the rate order is void, and that it must be set aside. We further submit that the state supreme court erred in not so holding, and that its judgment must be reversed.

III.

The State Supreme Court Erred in Affirming the Finding and Order of the Commission which fixed Rates upon the Basis of an Arbitrary Disregard of Operating Costs incurred by the Company in Rendering the Service.

The actual operating costs incurred by the company in rendering Lima service, as was proved by the evidence,

averaged $384,194.43 per year for the four-year period ending with 1931.

The commission's opinion stated that the expenses as taken into account by the commission averaged $301,920.92 per year for that period. In the appeal to the state supreme court it was admitted by counsel for the commission that this expense figure was erroneous because of errors in calculation and inadvertent omissions made by the commission's accountants in attempting to use figures they had culled from the annual reports of the company, pp. 25-7, *supra*. The largest error as to expense calculations was in the general and miscellaneous account where the commission (principally because its accountants had overlooked one entire subdivision of these accounts contained in the annual reports) used an average yearly figure of $33,713.00 only in its opinion, whereas the amount that it should have used on its theory of determining such item of expense was $45,025.00 per year, if rate case expense were taken into account on the basis of amortization over the ordinance period. (See Appendix A, pp. 179-84, *infra*.) Other admitted errors in calculation by these concealed experts of the commission affected the distribution expense and commercial expense accounts of the commission calculation. These corrections increase to $312,600.42 the figure which the commission obviously intended to use, if rate case expense is to be amortized over a five-year period.

Conversely, they decrease by about 56/100ths of 1% the annual return that would have been earned by the company under the commission rates. We shall discuss that feature later, pp. 128-35, *infra*, and show that, when errors in the commission's calculations of revenues under the rate order are also corrected, the annual return under the rates fixed is, even if the commission's theoretical operating expenses be adopted, 1.2% less than the 6.65% that the commission's opinion stated it would be. At this point we want to pre-

sent argument to support the position of the company that the various disallowances of expenses were arbitrarily made, and are not warranted under the evidence.

In order that the differences between the operating expenses claimed by the company and those taken into account under the corrected commission figures may be easily compared, we have set forth a table showing the average expenses incurred in Lima service as shown by Company Exhibit 104 (adjusted to the service within the city in the manner hereinbefore explained, pp. 13-4, *supra*), and the expenses taken into account by the commission, when errors of its accountants are corrected and rate case expense included. (See Appendix A, pp. 176-84, *infra*.)

Operating Expenses	*City of Lima Company Average 1928-1931, both inclusive.*	*City of Lima Commission Average 1928-1931, both inclusive.*	*Difference.*
Gas Produced and Purchased	$150,361.75	$146,574.92	$3,786.83—
Distribution Expenses	40,622.11	34,428.00	6,194.11—
Commercial Expenses..	20,804.25	19,719.00	1,085.25—
New Business Exp.....	12,110.20	5,000.00	7,110.20—
General and Misc. Exp.	47,557.80	45,025.00	2,532.80—
Indirect Charges to Constr.	(3,825.51)	(3,804.00)	21.51+
Retirement Allowance	52,539.40	24,518.00	28,021.40—
Amortization of Pipe Line	22,935.97	.....	22,935.97—
Real and Personal Prop. Taxes	22,767.32	22,797.25	29.93+
State of Ohio—Excise Tax	7,107.79	7,114.25	6.46+
Tax of Ohio Pub. Util. Com.	277.82	278.25	.43+

Federal Income Tax....	8,494.25	8,504.00	9.75+
Uncollectible Accounts	2,441.28	2,445.75	4.47+
	$384,194.43	$312,600.42	$71,594.01
			x5
Total difference on Five-Year Basis			$357,970.05

( ) denotes red figures.

It will be noted from an examination of this table that the principal differences during the four-year period are in the items of cost of gas purchased and produced, distribution expense, commercial expense, new business expense, general and miscellaneous expense, retirement allowance, and amortization of pipe line allowance. In addition to the foregoing items of expense, there is, commencing with the year 1932, a state excise tax item (approximately $4,200.00 for 1932), which the commission ignored entirely, but which does not enter into the four-year period tabulation.

We propose to discuss each of these principal items separately, and we believe that our analysis of the commission reductions therein will disclose the facts that in each case the reduction is arbitrary, illegal and unwarranted, and that any rate order predicated on such reductions, or any of them, results in the confiscation of the company's property in violation of the fourteenth amendment to the constitution of the United States.

The ignored items of expense are of two classes—first, those that represent actual out-of-pocket expenditures made during the period in the rendering of the service; and secondly, those for depreciation and amortization reserve which are partly actually expended for replacements and

partly carried in a reserve account to protect the integrity of the investment.

There is in this case no problem growing out of payments to affiliated companies. The only expenditures of such a nature were those made for certain engineering, secretarial, accounting, statistical and advertising services rendered, which were paid for at less than cost. (R. 382-5). The total of such expenditures averaged about $4,450.00 per year. The company, complying with the requirement announced by this court in *Smith v. Illinois Bell Telephone Company*, 282 U. S. 133 (1930), showed fully the fact that the company paid the affiliate for the services performed an amount less than the actual cost incurred by the affiliate in rendering the service. (R. 413-6, 424-5). No elimination or reduction of this item was made by the commission.

If rate case expense be taken into account and amortized over the ordinance period, the average amount of the class of expenditures first above mentioned, which the commission has disregarded throughout the four-year period, is about $20,500.00 annually. (For the period subsequent to 1931 the increased amount of state excise tax, which was about $4,200.00 for 1932, has also been ignored.) This disregard of actual costs increased the figure for net return on the rate base by about 1.1% per year for the first four years of the ordinance period. The reduction for 1932 would be substantially greater because of the increased excise tax.

If these costs are added to those taken into account by the commission, the average net earnings by the company for the four years, 1928 to 1931, both inclusive, is found to be but 4.36% per annum under the commission rates.

In the latter group the average amount disregarded is about $51,000.00 annually. This disregard of expense of

operation increased the figure for net return on the rate base by an additional percentage of more than 2.6% per year. When this additional amount is considered, average earnings for the four-year period are found to be less than 1.75% per annum under the commission rates.

As to the first mentioned type of expenditures particularly, the chief issue centers around the disregard by the commission and the state court of a basic, and long and clearly established, principle heretofore always followed in rate proceedings. This principle is that, when payments to affiliates are not involved, expenditures proved to have been actually made in rendering the service cannot be disregarded unless and until fraud or mismanagement or at least abuse of managerial discretion in making the expenditures is shown by competent evidence.

There is nothing unworkable or unfair in such a rule. It is manifestly a fair one, practical in its application, and consonant with justice. It has long been recognized as the proper guide to govern a company in preparing and presenting evidence in a rate controversy. It is abundantly supported by numerous decisions upon which this company was warranted in relying in making its showing as to the cost of rendering the service.

The commission in its rate order proceeded to reverse this long settled rule; and the state court upheld such action. In effect, the commission has said that, if the necessity of any operating expenditure is questioned, either in the hearings or afterwards, the commission can reduce the actual expenditure to any point it sees fit to choose regardless of the fact that there is no evidence establishing abuse of managerial discretion or mismanagement or fraud. We shall hereafter show that the action of the commission in the case at bar was, as to many items of disregarded expense, not even predicated upon any

suggested challenge of the expense made known during the hearings. The first intimation that the company had that the expenditures were questioned in any way came in the rate order itself. As to none of the eliminated expenses was there any proof of abuses of managerial discretion, mismanagement or fraud. As to none of them was there any evidentiary basis for the amount of reduction decided on by the commission. It must be apparent that, under such arbitrary kind of procedure, a company has no real protection at all and that by such procedure there can always be a confiscation of the property used in the public service. The company might just as well be given no hearing at all as to be bound by a decision which is predicated on alleged issues never asserted during the hearing, or on conclusions unsupported by proof or not premised on the established principles of law.

We call the court's attention to the clear condemnation of such practices which are set forth in its many decisions cited on pages 57-62 of this brief. Those decisions are equally applicable to the phase of this appeal now being discussed as they are to the point we were there discussing. We feel certain that this court will not fail to see that the order attacked in this case has its foundation upon a disregard of the imperative necessity of observing *"the obligation to preserve the essential rules of evidence by which rights are asserted or defended."** If non-observance of these essential rights by a commission be

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**Interstate Commerce Commission v. Louisville and Nashville Railroad Company*, 227 U. S. 88 (1913).

For discussions, by a widely known writer on government, of the paramount importance of adequately safeguarding against arbitrary action those who are subject to administrative regulation, see Laski *"Liberty in the Modern State,"* pages 38-41, and Laski *"A Grammar of Politics,"* pages 393-4.

upheld, then due process and the right of judicial determination of whether constitutional protection for property devoted to the public service has been infringed, have indeed atrophied to hollow mockery.

Neither in making this point nor in urging the preceding one, pages 55-62, *supra,* are we seeking to advance for the company any point of mere technicality. We are in fullest accord with that recent notable enunciation in this court of the principles governing the determination of whether due process has been afforded or denied:

> "The concept of due process is not technical. Form is disregarded if substantial rights are preserved. In whatsoever proceeding, whether it affect property or liberty or life, the Fourteenth Amendment commands the observance of that standard of common fairness, the failure to observe which would offend men's sense of the decencies and proprieties of civilized life. It is fundamental that there can be no due process without reasonable notice and a fair hearing. Though the usual and customary forms of procedure be disregarded, the hearing may nevertheless be fair, if it safeguards the defendant's substantial rights." (From dissenting opinion of Mr. Justice Roberts in *Snyder v. Massachusetts,* 291 U. S. 97, 127-8 (1934).)

But in the case at bar the action of the commission has been that of denying fundamental and essential rights, and of acting arbitrarily and without evidence.

Rate controversies are of necessity complex proceedings. The field of possible challenge is so broad that no amount of foresight could anticipate all the possible items that a commission might attempt to disallow under the claim of a "judgment informed off the record." Any attempt to make an extensive showing as to each item of outlay and its particular place and need in the operation

of the property would be prohibitive in cost and result in sheer economic waste. That such is the situation, makes it all the more essential, if due process is to be afforded, that the points of actual challenge be made known clearly and that the respective obligations of the parties in the presentation of proof be definitely preserved. Without that, it is not only impossible to secure fair and just protection but there must be a heavy and needless expense in preparing for and presenting evidence in every such controversy. In cases of this type the commissions have their staffs of technical advisers, and quite generally, as was true in the case at bar, municipalities are fully represented. It is certainly not imposing any hardship on, or denying adequate protection to, the public when the law requires, as it now does, that any challenge of actual operating costs or of managerial acts be made known and supported by proof.

Clear and undisputed authority establish, and show the rationale of, the principle that fraud, mismanagement or an abuse of discretion must be proved before actually incurred operating expenses can be ignored.

In *Interstate Commerce Commission v. Chicago Great Western Railway Company,* 209 U. S. 108 (1908) this court said, pages 119-20:

> "• • • The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. • • • Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not been overthrown by any legislation in respect to common carriers."

In his historic concurring opinion in *Missouri ex rel. Southwestern Bell Telephone Company v. Public Service*

Commission of Missouri, 262 U. S. 276, 290 (1923), Mr. Justice Brandeis, in discussing the use of prudent investment as the rate base, made the following observation, the basic reasons for which are, we submit, equally applicable to expenditures made in the conduct of the business by the persons entrusted with its operation:

> "The term 'prudent investment' is not used in a critical sense. There should not be excluded from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. *Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown.*"

In the *Southwestern Bell Telephone Company* case, this court, in dealing specifically with operating expenses, stated the rule clearly, pages 288-9:

> "There is nothing to indicate bad faith. So far as appears, plaintiff in error's board of directors has exercised a proper discretion about this matter requiring business judgment. It must never be forgotten that, while the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership. The applicable general rule is well expressed in *States Public Utilities Commission ex rel. Springfield v. Springfield Gas & Electric Co.*, 291 Ill. 209, 234, 125 N. E. 891, 901:
>
> > " 'The commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; nor can it

> ignore items charged by the utility as operating expenses, unless there is an abuse of discretion in that regard by the corporate officers.' "

In *Banton v. Belt Line Railway Corp.*, 268 U. S. 413, 421-2 (1925), the court said:

> "Broad as is its power to regulate, the state does not enjoy the freedom of an owner. Appellee's property is held in private ownership, and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belong to its owners. *Northern Pacific Railway v. North Dakota, supra,* 595, 596, 35 S. Ct., 429; *Norfolk & Western Ry. v. West Virginia, supra,* 609, 35 S. Ct. 437; *Interstate Commerce Commission v. Chicago G. W. Ry.,* 209 U. S. 108, 118, 28 S. Ct. 493, 52 L. Ed. 705."

In *Atchison, Topeka & Santa Fe Railway Co. v. United States,* 284 U. S. 248 (1932), the court stated, page 262:

> "But the Commission, exercising a delegated regulatory authority, *which does not have the freedom of ownership,* operates in a field limited by constitutional rights * * *."

In *Brooklyn Borough Gas Co. v. Prendergast,* 16 F. (2d) 615 (1926), the statutory court pointed out, page 623:

> "Neither the defendants nor the court is charged with the management of the plaintiff; neither may, in the absence of a showing of mismanagement, inefficiency, or bad faith, substitute its business judgment for that of plaintiff's officers. After the fullest examination of the plaintiff's property, books, and method of management, and after testing the truth of plaintiff's witnesses by cross-examination, defendants presented no evidence of fraud, waste, or inefficiency in plaintiff's management. * * *

> "Defendants do not contend that the plaintiff did not actually incur every item of operating expense as claimed, nor do they suggest that the plaintiff bases its claim upon other than accurate books of account. They did not *prove* waste or inefficiency, and I see no reason for substituting the hypothetical judgment of the accounting witness for one of the defendants for the actual experience of the plaintiff in the operation of its business, and I am of the opinion that operating expenses should be allowed in the amount claimed and proved for the year 1923, of $1,020,039.39."

In *Citizens' Gas Co. of Hannibal v. Public Service Commission of Missouri,* 8 F. (2d) 632 (1925), the court states, page 634:

> "The commission is not the financial management of the corporation, and is not empowered to substitute its own judgment for that of the directors of the corporation. There is no evidence of an abuse of discretion by the corporate officers in the matter of expenses."

The principle is trenchantly discussed and applied in the report by the special master appointed by a statutory federal court in the rate proceedings reported in *New York & Richmond Gas Co. v. Prendergast,* 10 F. (2d) 167 (1925). It is a clear statement of the applicable legal principles. This report, which in its treatment of operating expenses was approved by the court, states those principles as follows, page 181:

> "The operating cost and taxes for the years ending December 31, 1922, December 31, 1923, and the nominal year ending November 30, 1924, were established by the plaintiff's witnesses and books of account and were not controverted by the defendants. The defendants however, claim that certain items should be eliminated from these operating expenses, which I will now consider:

"First. Salary paid to Mr. Davidson, the company's comptroller, it being urged by defendants that such services were of such questionable nature as not to inure to the benefit of the company's consumers; also that the company was not operated, in the opinion of the defendants, in the most economical manner in so far as relates to the size and number of the company's gas sets.

"These two objections involve substantially the same question, namely: Did the management conduct its affairs with proper discretion and sound business judgment? In the absence of evidence to that effect, I assume that the management conducted its affairs discretely and with the sound business judgment that the ordinarily prudent business man would exercise in the conduct of his own affairs.

"In *Consolidated Gas Co. v. Newton,* Judge Learned Hand said: 'As to the necessity of having 7 cars I will rule here, as elsewhere, in the absence of some evidence showing that they were unnecessary, or that the officers abused their powers • • • that their judgment must stand prima facie. As in analogous situations, given the discretion, its exercise must be shown to have been injudicious • • • as in other cases where the matter rests in their discretion, I think that a presumption exists that it is well exercised until the contrary is shown.' *Consolidated Gas v. Newton* (D. C.) 267 F. 255; *State Pub. Utilities v. Springfield Gas,* 291 Ill. 234, 125 N. E. 891; *Southwestern Bell Telephone Co. v. P. S. C. Missouri,* 262 U. S. 276, 43 S. Ct. 544, 67 L. Ed. 981, 31 A. L. R. 807. Therefore, under the evidence, I have not eliminated from the costs of operation the salary paid to Mr. Davidson, or any portion of the costs of operation which may be asserted by some to have been paid by virtue of operating the enterprise in an alleged uneconomical manner.

• • • •

"• • • *The men who are skilled in the operation of a gas company must be presumed to have*

done their best, conscientiously and effectively, until the contrary is shown by competent evidence. Items of actual outlay may not be eliminated by the court merely because one or both of the defendants wish to cut out something.''

In the case at bar there was no evidence showing the eliminated expenditures were improperly incurred, or ought not to have been made in the exercise of honest business judgment. Practically all of them were entirely unchallenged.

See also:

Chesapeake & Potomac Tel. Co. v. Manning, 186 U. S. 238, 248 (1902).

Public Utilities Commission v. Springfield Gas and Electric Co., 291 Ill. 209, 234 (1919).

People ex rel. D. & H. Co. v. Stevens; 197 N. Y. 1, 10 (1909).

Columbus Gas Light Company v. Public Service Commission of Indiana, 193 Ind. 399, 404 (1923).

Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Commission, 11 F. (2d) 319, 325 (1926).

Denver Union Stock Yard Co. v. United States, 57 F. (2d) 735, 747-749 (1932).

Re Milwaukee Electric Railway & Light Co., P. U. R. 1931E 289, 296 (1931).

We recognize that the scope of the foregoing principle has recently been limited by decisions of this court, which hold it inapplicable where transactions with an affiliated company are involved. It is clear in such situations that the common control over both the parties to the transaction destroys the presumption which is one of the foundations

of the general rule that the managers have acted in a manner deemed by them to be for the best interest of a single party in which they had an interest. In other words the reason upon which the principle is grounded, does not exist when one management is charged with the duty of looking after the oftentimes conflicting interests of both parties to a single transaction.

Smith v. Illinois Bell Telephone Company, 282 U. S. 133, 151 (1930).

Western Distributing Co. v. Public Service Commission of Kansas, 285 U. S. 119 (1932).

Dayton Power & Light Co. v. Public Utilities Commission of Ohio, 292 U. S. 290 (1934).

Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 292 U. S. 398 (1934).

But the rule in case of inter-company transactions has its very foundation in the intimacy of the affiliated relationship, and we believe this court has been careful to make such fact clear.

Thus in the *Western Distributing Company* case this court said, pages 126-7:

> "• • • *in view of the relations of the parties* and the power implicit therein arbitrarily to fix and maintain costs as respects the distributing company which do not represent the true value of the service rendered, the state authority is entitled to a fair showing of the reasonableness of such costs, although this may involve a presentation of evidence which would not be required in the case of parties dealing at arm's length and in the general and open market, subject to the usual safeguards of bargaining and competition."

And in the *Dayton* case this court said, page 843:

> "• • • the burden of proof was on the buyer of the gas to show that in these transactions with the

> affiliated seller the price was no higher than would fairly be payable in a regulated business by a buyer unrelated to the seller and dealing at arm's length."

The state court, while admitting the general principle in the seventh syllabus of its opinion, tried to disregard its application by asserting in its next syllabus that "when the integrity of such entries is attacked then the public utility carries the burden of supporting its entries by the greater weight of the evidence." It then erroneously assumed that there had been any such attack, and that the greater weight of the evidence supported each elimination of expense items made by the commission.

The assumptions are wholly unfounded. There was in this case no attack upon the "integrity of the entries," or any of them. In the hearings there was no question whatsoever raised as to any of the items reduced by the commission except the retirement and amortization reserves, and the query in cross-examination and by a city witness, who was wholly without experience in utility management, as to whether the results of new business expenditures were commensurate with the amount of expenditures. (R. 339-44, 453). We shall discuss these phases of the case more fully later. There was not one word of evidence or any claim made that mismanagement or abuse of managerial discretion or fraud existed. In the situation shown by the record here, the issue which the state court attempted to create is clearly moot. The pronouncement of the eighth syllabus is foreign to any problem in the case.

We think it important, however, that it should not go unchallenged as an exposition of any rule of law. Obviously it is at variance with the principle uniformly set forth in the decisions just discussed. It is in effect also a direct reversal of the age-old rule of law that the burden of proving an issue rests on the party asserting it. It

would establish a presumption of fraud, if fraud were mentioned. It would create a presumption of mismanagement, if mismanagement were claimed. Clearly it is not the law.

We do not claim that a management may be profligate or that it can overreach the bounds of a reasonable business discretion. There is, of course, a duty of honesty and prudence in management. But any claim that the management has failed in these respects must be supported by proof. Neither claim nor proof are to be found in this case.

We recognize, too, that where any such charges are made and proof thereof submitted, the court would be called upon to determine how strong the showing of fraud or mismanagement or abuse of discretion must be before the regulatory body can disregard actual operating expenditures. That issue is not involved here. The inescapable fact here is, as a study of the evidence will disclose, that no such proof exists in the case at bar.

As to the items of unaccounted for gas loss expense, distribution expense, commercial expense and rate case expense, there was not even any suggestion, either by the city or by the commission, of any challenge as to the necessity for, or the reasonableness of the amount of, such expenditures. And as to the new business expense there was no evidence introduced to overcome the showing by the company as to these actual expenditures and the need therefor. The expenditures were simply disregarded in the commission order.

In its decision the state court entirely lost sight of this situation. It closed its eyes to the facts that the company had shown in full detail its actual expenditures for gas produced and purchased, distribution expense, commercial expense, new business expense, general and miscellaneous

expense and state excise tax expense in connection with Lima service; that there was no attack on the "integrity of the (se) entries;" and that in this situation the commission had ignored more than $82,000.00 of such actual expenses for the four years that it considered.

In spite of the profession by the state court and commission that they were not substituting their judgment for that of the operators, the thing done was a most flagrant and arbitrary usurpation of the domain of management. It is obvious that the commission merely decided to cut out whatever was necessary in order to have a pretext for reducing the rates; and that the state court blindly accepted that action.

A study of the record will show indisputably that, as to this first class of expenditures, there was, when the hearings closed, no evidence in the record under which disregard of any part of such operating costs would be warranted.

The company had made a full and complete showing as to its actual operating costs, and as to other factors affecting return. (R. 529-54, 316-426, which includes Company Exhibits 104, 105, 106 and 107). On items that were challenged, it showed specifically the need of the expenditures. Its chief accounting officer presented this exhibit and supplemented it by oral testimony. He was subjected to such cross-examination as both the city representatives and the commission desired to make.

The city expert and his associate were permitted free access to the books and records of the company and made a long and detailed study thereof. That study resulted in no challenge of the integrity, accuracy or clarity of the company's accounting records. The city expert, upon inquiry by his own counsel, stated that he had no difficulty in analyzing these accounting records and making his study of

expenses. (R. 433). This belies the commission's vague insinuation in its opinion in the *Kenton* case that the records were confusedly kept. (*Kenton* record 91). The city introduced in evidence the results of its examination of the company's books and presented its claims as to the operating costs and net return of the company. (R. 577-616, 426-87). That analysis checked closely with the information submitted by the company comptroller.

We call the court's attention to the analysis of the evidence as to operating cost which is set forth in the statement of facts, pp. 14-9, *supra*. We urge the court, if it has any doubt on this matter, to examine the exhibits and testimony as to these operating costs. That testimony will be found not to warrant or support the reductions in operating costs which the commission has attempted to make. The commission recognized this fact in its opinion. (See commission opinion, R. 93). It is further shown by the direct testimony of the city expert, Mr. Allensworth, who was the only person, other than company witnesses, who touched upon this subject: (R. 445-6).

> "Q. (By Mr. Light) You have not attempted a theoretical set-up of what the distribution expense, commercial expense, new business expense and general and miscellaneous expense items should be? A. No, sir, I have not.
>
> "Q. Why not? A. I do not believe that it would be entirely becoming of me to make such study. That is more in the nature of a study to be made by what is known in the profession as an industrial engineer or an efficiency expert. I do not attempt to qualify as such. • • •"

The commission introduced no evidence whatsoever upon the subject of operating costs. This cannot be charged to the lack of opportunity so to do. The initial

hearing on operating expenses and return was held June 7, 1932. The final order of the commission was not issued until March 10, 1933. Under the law the commission and its staff have access at all times to the accounting records of the company, and those records are always open to examination and investigation by the commission and its assistants. Furthermore, they are kept under the supervision of the commission and in accordance with rules promulgated by it.

The court not only will not find in the entire record any evidence of fraud, mismanagement or abuse of managerial discretion, but will not find any evidence establishing the unreasonableness of any of these expenditures. Surely, even if it were the law that the burden of proof as to the necessity for each expenditure rested on the utility, the company in this case could not be deemed to have failed to make the necessary showing when it detailed its actual outlays, and opened its entire records for an inspection and examination which was made by the opposition. Surely if any cause for disregard of such outlays exists, such showing must be overcome by evidence. Surely the regulatory body cannot sit by, and after the hearings have closed commence to create issues concerning which the utility has never been apprised, or make findings that are without support in the evidence in the record. If due process means anything at all, if it is to afford any protection at all, such arbitrary and high-handed procedure cannot be condoned.

We respectfully refer the court to the decisions heretofore cited and discussed, pp. 70-5, *supra*. Those decisions plainly show the unsoundness of the action of the commission and of the decision of the state court on this point. They set forth the true principles that must govern the correct determination of this case.

We desire now to point out the untenability of the action of the commission and the state court as applied specifically to each group of these operating expenses disregarded.

1. Gas Produced and Purchased.

The commission accomplishes this reduction of approximately $3,800.00 a year, or $19,000.00 for the five-year period, by arbitrarily reducing, by more than 22%, the unaccounted for gas losses of the company.

The commission opinion indicates that the method by which this reduction was made was solely that of ignoring the actual experience of the company as to losses through unaccounted for gas and arbitrarily fixing the allowance for such losses at 7% of the total gas manufactured. This was about 2% lower than the actual experience of the company.

The state court has assumed in its opinion that in the hearing before the commission there was an attack on "the integrity of the item" of unaccounted for gas. This assumption is in error. There is no testimony supporting the commission reduction. Although the company's operating data was subject to inspection and study by the city and commission staff, no challenge of any kind was made as to the reasonableness of the actual experience of the company as to this item of expense. There is not a single word in the evidence to warrant any claim that the unaccounted for gas losses were excessive; and there is not a word to support the statement of the commission that with "proper care" the loss could have been reduced to 7%.

The company showed its actual expenditures for gas, and its actual experience in unaccounted for gas losses. No question as to these losses was raised during the hearing by either the city or the commission. The first intima-

tion which the company had of any challenge of the item was the order itself. A petition for rehearing was denied. Certainly if the incurred expense is to be challenged, that challenge must be founded on evidence properly introduced during the hearings. The company must be informed of the issue, and be given an opportunity to meet any evidence that might be produced to support the claim.

The commission apparently attributed the entire unaccounted for gas losses to leakage. As a justification for the reduction, the commission on page 5 of its opinion, under a paragraph captioned "Gas Leakage," states that "this [the 9%], we believe to be excessive and with proper care of the system could be reduced to 7%, which we allow." The opinion gives no intimation as to what this "proper care" should be, or wherein the management is lacking in the exercise of "proper care." There is no evidence that these losses of the company were excessive, or that they could practically or economically be reduced below the 9%.

As a matter of fact, unaccounted for gas losses are not due entirely to leakages in mains or services. Many other factors contribute to them. To name the more obvious ones, there is the difference resulting from the reading of a single meter at the point of send-out and the readings of the thousands of meters on the premises of individual consumers, from the item of stolen gas (far from an insignificant item in the gas business, especially during the prohibition period), from differences in volume due to temperature of gas as measured, from shrinkage due to condensation in mains and holders, and from metering inaccuracies. The amount of such losses vary widely in different properties and at different times in the same property. To a considerable extent they are wholly unavoidable, regardless of expenditures made in attempted

prevention. The point at which it becomes economically advisable to spend additional moneys in maintenance and in investigations in an effort to diminish the amount of unaccounted for gas is one which is primarily a question of managerial judgment.* In the absence of a showing to the contrary, that judgment must be deemed to have been honestly and intelligently exercised. In this case there is not one word of evidence showing any claim of abuse or lack of wisdom in the exercise of that power of judgment.

Until and unless it is established by evidence that the loss has reached a point that is so out of line with general experience in the gas business that a case of abuse of managerial discretion is shown, or that there are available preventive measures that are practical and that sound management should have adopted, the commission cannot eliminate a part of the cost of gas because such losses exist.

In *Brooklyn Union Gas Co. v. Prendergast,* 7 F. (2d) 628 (1925), this very question was presented to a federal court.

In that case gas rates fixed by the state authority were being challenged as confiscatory. The attorney general,

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*NOTE: For interesting and instructive reports based on studies of unaccounted for gas losses, see the reports on unaccounted for gas by subcommittee of the Pacific Coast Gas Association:

14 Proceedings Pacific Gas Association 124 (1922), in which twenty-six factors responsible for unaccounted for gas are outlined.

14 Proceedings Pacific Gas Association 679 (1923).

15 Proceedings Pacific Gas Association 387 (1924), in which "actual losses" and "fictitious losses" are discussed.

defending the rates, sought to have the allowance for unaccounted for gas limited to 5%. The special master refused so to do, and allowed the amount shown to have been actually experienced. He said, page 652:

> "There is always an item of 'unaccounted for' gas. This is due to leakage, condensation, expansion, and contraction, among other things. An allowance must always be made for this item as a part of the cost of manufacture. What percentage shall be thus allowed has been the subject-matter of considerable dispute. This factor varies with the consumption per mile of main, with the number of consumers within a given distance, and with reference to other factors. It seems incapable of determination with precision, but experience enables these companies to determine approximately what this item ought to be. The Attorney General contends that 5 per cent. is an appropriate allowance. The records of the plaintiff indicate what this item amounts to in actual practice with them, and in the absence of any evidence attacking either the integrity of the record or tending to establish extravagance in that regard, I have accepted the company's own records as indicating the allowance that should be made for this item."

In approving this portion of the special master's report, the court stated, page 671:

> "The Attorney General contends that unaccounted for gas, that is due to leakage, condensation, expansion, and contraction, among other things should be allowed at an arbitrary figure of 5 per cent., but I do not agree with him, because in my opinion the proper method is to allow it on the basis of the companies' own records, which show the result of experience."

In the case at bar there is no evidentiary basis whatsoever even tending to support the commission act of allowing as an operating expense an amount less than the actual cost to the company of the gas that it has been necessary to produce or purchase in order to have sufficient gas to supply its customers. We need not here discuss how far the powers of the commission go in a case where mismanagement or incompetence are established. In this record there is a complete absence of any evidence showing any such situation or, in the language of the *Brooklyn Union Gas Co.* case, "attacking either the integrity of the record or tending to establish extravagance in that regard." The right of the company to have the full amount of such item taken into account was not even questioned in these proceedings. It is answer enough here that no legal support for this phase of the commission order can be found in the record.*

The court's assumption in its opinion (R. 31-2) that the percentage of loss of 9% is "so unreasonable on its face as to warrant investigation," is wholly out of line with the general experience of the gas distribution industry. It discloses a complete lack of understanding of the subject of unaccounted for gas.

The fact that send-out percentage comparisons blindly employed are productive only of meaningless results is well pointed out in the authorities to which we have heretofore referred the court in the note on page 84, *supra.*

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*NOTE: We suggest in passing, however, that an examination of the reported unaccounted for gas loss experience of gas companies generally, will indicate clearly that the experience of this company is not out of line with that of most gas distributing companies and is considerably better than the average. (See annual editions of *Brown's Directory of American Gas Companies.*)

In the 1922 committee report on unaccounted for gas losses contained in 14 *Proceedings Pacific Coast Gas Association* 124, the committee stated, page 125:

> "As has often been proven, the expression of unaccounted for gas as a percentage of the sales or send out is not a true basis for comparison. Neither is the expression of unaccounted for gas as the amount of annual loss per mile of main of a given size entirely satisfactory. Some channels through which gas is lost bear a direct percentage to the amount of gas sent out; others are in proportion to the miles of mains, while some are related to the number of services, pressures carried, the quality and kind of gas, the age and type of system and the character of the soil. Obviously, there is no short method by which a true unaccounted for gas coefficient may be obtained which will apply equally as well to all systems."

And in the report of the 1923 committee, these facts were further stressed and graphically illustrated. The committee report stated (14 *Proceedings Pacific Coast Gas Association*, 679, 682-3):

> "The following table will show how, by using the figure of unaccounted for gas expressed in percentage of send-out, one idea would be formed, while by using figures expressing the unaccounted for per mile of main on a six-inch basis or in percentage of sendout if the annual sales per consumer were taken at 50,000 cubic feet, other ideas would be formed, no two of which would agree.
>
> (See next page for table).

Gas Co.	*Position*	*Per Cent Unaccounted for*	*Per Mile of Main 6" Basis*	*Position*	*Sales per Consumer*	*Unaccounted for in per cent of Send-out on basis of annual sales per consumer of 50,000 cu. ft.*	*Position*
A	2	9.2	43,926	7	55,000	10. %	7
B	11	19.	.....	....	34,386	15.6 %	9
C	9	14.9	39,355	6	37,600	11.6 %	8
D	6	11.75	31,552	5	37,000	8.74%	3
E	10	18.10	4,564	1	21,643	8.7 %	2
F	7	13.80	28,164	3	30,011	8.9 %	5
G	4	10.61	56,523	8	41,800	9. %	6
H	3	9.60	28,984	4	41,920	8.2 %	1
I	5	10.90	21,965	2	39,343	8.8 %	4
J	8	14.4	121,975	10	125,611	30.8 %	11
K	1	6.8	61,602	9	198,853	24.2 %	10
L							

"Examination of the table will show that, while the unaccounted for gas of a company expressed in the ordinary way of percentage of sendout might be very low and tend to show the system in good condition, conversion of this figure into other terms might disclose the opposite."

Furthermore, if an arbitrary allowance by the commission for unaccounted for gas were permissible, it would be necessary to make an increased allowance in maintenance expenses for the work necessary in the endeavor to search out and eradicate the gas losses. The commission admits on page 5 of its opinion that in order to diminish the amount of unaccounted for gas, additional "care of the system would be necessary," but no allowance for such expense is made in the commission's estimate of operating costs.

We submit that the elimination by the commission of a part of the cost of gas is not based upon the evidence, and that the action of the commission in making this reduction in operating expenses is arbitrary and unwarranted, and cannot be sustained.

2. Distribution Expense.

The commission reduced the actual average distribution expense of the company by approximately $6,200.00 a year, or a total of $31,000.00 for the ordinance period. The state supreme court upheld this reduction. The reduction was made by finding the average distribution expense per customer during the period for all communities served by the company, and multiplying this by the average number of customers in Lima. In the table set forth in the commission's opinion the reduction in the actual distribution expense was but $5,729.36 (R. 120 and page 64, *supra*), but this figure was erroneous because of mistakes made by the commission's expert accountants in trying to figure the average number of customers in Lima each year. The corrected figure was substituted after the brief for the attorney general disclosed the method followed and the error made. (See Appendix A, pp. 183A, 170-1, 179-81).

The true distribution expense for Lima cannot be arrived at in the way attempted by the commission, and the adoption of such a scheme does not charge to the Lima service the real cost for such item incurred in rendering the service. The distribution expense in connection with gas service in Lima is directly charged on the books of that company to the Lima service. These costs are those incurred in connection with the local distribution of the product sold. They include the costs of superintending the distribution of gas, work on customers' premises in connection with rendering the service, changing of meters used to measure the gas sold, and the maintenance of the local distributing mains, services and meters. (R. 539). They are in no sense items of expense which are incurred jointly for all the communities served by the company. They are distinctly local expenses in each community served, attributable to the service in that community, and charged on the books of the company directly to that community. The undisputed evidence shows these facts. (R. 529-48, 318-9, 346-50).

In the main, the employees who render those services perform services in the Lima district alone. There can be no excuse for charging a part of these distinctly local services to other communities served by the same company, if rates are to be fixed for Lima alone. The company could be justly criticized if it did that on its books. There is no problem of allocation involved. Superintendence of the gas distribution system in Lima has no connection whatsoever with the superintendence of the local distribution systems in other communities. The expense of resetting a Lima customer's meter or of repairing a main or service in Lima does not in any way determine the cost of similar activities in the other communities; and there can be no justification for charging part of that expense to the con-

sumers in other communities, or, if the situation were reversed, for charging Lima consumers with a portion of these direct expenses incurred in other communities.

The commission's analysis of the company's entire operating expense, apparently disclosed that the distribution expense in the city of Lima ran somewhat higher per customer than it did in the other and smaller communities served. That this is true, is, of course, to be expected. In the larger city, there is more paving to be cut in making main repairs, wages are probably on a somewhat higher scale, and the percentage of customer change of residence is probably markedly higher. But the fact that it costs more to perform this service in Lima does not justify assigning a portion of this local expense to the cost of rendering service in Celina or Kenton or any of the other communities served by the company. Yet, that is exactly the effect of what the commission has attempted to do in this case. Such arbitrary cutting down of direct expenses is wholly without warrant; and we can well surmise the reaction both in the commission and in the other local communities, if the company endeavored to boost its actual distribution expense there incurred by the methods here pursued by the commission in order to cut down the real expense in Lima.*

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*NOTE: It is interesting to observe that in reaching its decision in the companion rate case of the company involving gas rates in Kenton (cause numbered 213 in this court) the commission abandoned its "customer average" methods of allocation applied in the case at bar. To have applied the "customer average" in that case would have increased distribution expense there by $3,315.39 for the single year considered by the commission. (See brief in cause No. 213, pp. 41-2). Of course, any allocation method used must be applied throughout the entire property.

This court has recently had occasion to point out that in fixing utility rates for a single community, a regulatory commission can ground its decision upon the earnings from that service without regard to what the earnings of the utility as a whole may be. *Wabash Valley Electric Co. v. Young,* 287 U. S. 488 (1933). It is a necessary corollary to that right that the commission has an obligation to determine fairly the expense of serving that community. In finding the amount of such expense the commission cannot proceed in a manner "unrelated to realities." To reach an incorrect but desired figure as to net earnings recourse may not be had to an arbitrary formula. *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio,* 292 U. S. 398 (1934). *A fortiori,* allocations may not be made where the established facts are that the operating costs being considered are direct costs incurred exclusively for the single community whose rates are in issue.

This fundamental has been expressly pointed out by this court in past decisions dealing with analagous problems.

In *Northern Pacific Railway Company v. North Dakota,* 236 U. S. 585 (1915), this court, in discussing expense allocation said, page 597:

> "The outlays that exclusively pertain to a given class of traffic *must be assigned* to that class, * * *."

And in *Banton v. Belt Line Railway Corp.,* 268 U. S. 413 (1925), this court in discussing the method of determining the cost of carrying a given class of traffic stated, page 421:

> "And such cost includes *not only* the *expenditures,* if any, *incurred exclusively for that traffic,* but also a just proportion of the expense incurred for all traffic of which that in question forms a part."

Northern Pacific Railway Company v. Department of Public Works, 268 U. S. 39 (1925), likewise expressly holds that expense computations that are not founded on, but ignore the proof of, actual specific costs, will invalidate a rate order.

In that case the issue before the commission had been the fixing of rates for intrastate transportation of logs in the state of Washington. After hearing, the state commission ordered substantial reductions in rates. The carriers appealed to the courts, asserting that the findings of the commission were arbitrary and unsupported by the evidence, and that the rates fixed were confiscatory. The state supreme court upheld the commission decision, but the order was set aside by this court. This court discussed at length the nature of the error in the commission's action. Much of its criticism can with like force be applied to the action of the commission in the case at bar, and the like error made by this commission, in dealing with the evidence before it, vitiates its ruling. We, therefore, quote at considerable length. It was said, pages 42-4:

> "The three principal carriers presented evidence tending to show that their existing rates were so low as not to yield any return upon the property employed in the business; and that the rates did not defray fully the operating costs of the traffic and its proportion of the taxes payable. This evidence was in character persuasive. It was fairly specific, direct, and comprehensive. *If the facts warranted,* the *shippers and the public officials might,* of course, *have shown by evidence* of similar character *that the carriers' evidence was inherently untrustworthy; or it might have been overcome by more persuasive evidence to the contrary.* Little attempt was made to show that any testimony introduced by the carriers was inherently untrustworthy. Little conflict with the evidence of the carriers was de-

veloped by the evidence as to specific facts introduced for the shippers and the public. Apparently necessary inferences from specific facts established by the carriers were not explained away. The Department's findings concerning operating costs rested largely upon deductions from data found in published reports of the carriers and in their exhibits filed in this case. Instead of attempting to show by evidence, reasonably specific and direct, what the actual operating cost of this traffic was to the several carriers, the Department created a composite figure representing the weighted average operating cost per 1,000 gross ton miles of all revenue freight carried on the four systems and made that figure a basis for estimating the operating cost of the log traffic in Washington. This was clearly erroneous.

"A precise issue was the cost on each railroad of transporting logs in carload lots in western Washington, the average haul on each system being not more than 32 miles. In using the above composite figure in the determination of this issue the Department necessarily ignored, in the first place, the differences in the average unit cost on the several systems; and then the differences on each in the cost incident to the different classes of traffic and articles of merchandise, and to the widely varying conditions under which the transportation is conducted. In this unit cost figure no account is taken of the differences in unit cost dependent, among other things, upon differences in the length of haul; in the character of the commodity; in the configuration of the country; in the density of the traffic; in the daily loaded car movement; in the extent of the empty car movement; in the nature of the equipment employed; in the extent to which the equipment is used; in the expenditures required for its maintenance. Main line and branch line freight, interstate and intrastate, car load and less than car load, are counted alike. The Department's error

> was fundamental in its nature. The use of this factor in computing the operating costs of the log traffic vitiated the whole process of reasoning by which the Department reached its conclusion."

See also:

The Minnesota Rate Cases, 230 U. S. 352, 437 (1913).

The record in this case shows the actual distribution expenses incurred for Lima. They are direct costs attributable to that service, (R. 539), *and that service only.* In fixing rates, those costs and not some hypothetical ones, must be considered. The commission cannot substitute for actual cost of operation, its own theoretical estimates.

This was expressly pointed out in *Wisconsin-Minnesota Light & Power Company v. Railroad Commission of Wisconsin,* 183 Wis. 104 (1924). In that case, the court found that the company was entitled to net earnings of $39,002.50 in order to secure an 8% return. Its actual net earnings were $24,073.10; yet the commission had attempted to reduce the rates. The court, in setting aside the commission order, stated, pages 105-6:

> "The Commission arrived at its conclusion by substituting for the experience of the company estimates as to future revenues and future operating costs. In setting aside the existing rate the Commission cannot substitute for the experience of the company its estimates as to future revenues and operating costs. The net earnings of the company for the year ending October 31, 1921, was a completed operation. Estimates as to revenues could not change the fact as it existed. If it be assumed that the Commission, where there is evidence to show that an existing rate is unlawful, is justified in basing the substituted rate upon estimates, we cannot see how estimates can be used to establish the

> unlawfulness or unreasonableness of an existing rate. There is no attempt to sustain the order of the Commission in the case on any other basis than that of estimates. There is no claim that the management is willfully extravagant or that plaintiff improperly administers its property."

The principle is applicable with even greater force to a situation such as the case at bar where the commission is fixing rates applicable to a period that is already past.

3. Commercial Expense.

The actual commercial expense for the company for the Lima district as shown by the books of the company was reduced by the commission $1,085.25 a year, or more than $5,400.00 for the five-year period. The commission opinion shows a somewhat lesser reduction, due to the mistakes of its accountants in determining customer averages. The above figure is the one worked out with counsel for the commission as the reduction resulting after the commission method was properly applied. This method of reduction was accomplished in the same manner as the reduction for distribution expense (R. 93), and for the same reasons heretofore given, the commission method cannot be sustained.

The commercial expenses for Lima, shown in the company's accounts and set forth on pages 540 and 543 of the printed record, are almost entirely local expenses incurred in the Lima service and are direct charges to that service. These expenses include the cost of reading the meters, keeping the customers' accounts, and sending out and collecting bills. There is no place in these charges for the use of company averages, even if properly arrived at, and the reduction made by the commission in this item of expense must be corrected.

4. New Business Expense.

The heading "New Business Expense" is that used by the classification of accounts prescribed by the commission for the account in which are recorded expenditures made both for the purpose of securing new business and in the endeavor to retain against competitive services, business already had. The account designation is therefore something of a misnomer. (R. 339-44).

In dealing with this item of expense, the commission first applied its "averaging principle" and found, under its erroneous method of determining the average, that the average new business expense for the entire company for the period was $1.05 per customer. (Commission opinion, page 4. R. 93). The average number of customers in Lima during the period was 9,962. (See Appendix A, page 181, *infra*). Multiplying the $1.05 by 9,962 would have given the sum of $10,460.10 for an average year, or $1,650.10 less than the average actual expense annually incurred for this purpose by the company during the period. (See p. 64, *supra*). This would have resulted in an arbitrary reduction in this item of about $8,250.00 for the five-year ordinance period.

The result would have been incorrect and untenable for the same reason heretofore pointed out in discussing the treatment of distribution and commercial expenses by the commission. New business expense is a direct expense incurred in varying amounts in the different communities served. The amount expended is dependent upon the character of the community, the financial situation of its people, the probabilities of developing new uses of the product sold, and the press of competitive services. The charge is made directly to the community where the effort has been made, and is, of course, rightly a part of the cost of service in that community alone.

The commission did not, however, even give the company the benefit of the system average in this case. After establishing the average, it ignored the figure and arbitrarily limited the items of expense for new business to $5,000.00 a year. It thereby reduced this item more than $7,000.00 a year below actual expenditures, or by a total in excess of $35,000.00 for the ordinance period. The only justification offered for this disregard of an actual expenditure is that the commission is "not convinced • • • that the expenditures • • • should be allowed • • • in the full amount that they may have been spent" and that the allowance made is "in what we deem an ample sum." (R. 95-6).

Nothing more than these bald conclusions is offered as an excuse for or in support of the reductions. The action of the commission on this item of expense is in flagrant disregard of the rights of the company. It is wholly without support in the evidence in this case. Nothing can be there found upon which to predicate an arbitrary reduction by 60%, or in any amount whatsoever, of this very necessary expense. In fact the city in its exhibit as to operating expenses showed the item in full, p. 17, *supra*. (R. 582-6). The reduction therein made by the commission is no less arbitrary than those condemned by this court in *Ohio Utilities Company v. Public Utilities Commission of Ohio*, 267 U. S. 359 (1925).

The commission action is an unprecedented and inexcusable attempt by a commission to dictate the policies of management. It disregards the fundamental rights of management. If a commission can upon such flimsy pretexts disallow such expenses that have been made in good faith by a competent and experienced management, which bears the burden of operating and developing the property, of rendering adequate service, and of protecting the invest-

ments that have been made in the business, then there is nothing whatsoever left to the doctrine of private management, and there can be no security in utility investment. Fortunately the law does not countenance what the commission has here attempted. Like practices have repeatedly been condemned by the courts, and have been the foundation of reversals of commission orders.

In *Consolidated Gas Co. v. Newton,* 267 Fed. 231 (1920), the court was called upon to pass upon a challenge of new business expenses, in a case where rates had been ordered reduced by the state commission through the device of disregarding actual operating costs. In holding that the expenditures for new business made must be allowed, Judge Learned Hand said, page 253:

> "Their propriety is challenged largely because the sales have not increased much. The truth appears to be that the constantly increasing use of electricity for illumination has driven out gas more and more, until to hold its sales the plaintiff must promote the use of gas for heating and cooking. It has succeeded in a slight increase of sales, and its officers attribute their ability to do even so well to these departments. I have no doubt that they are right; but, whether right or wrong, their decision is not now open to question. They were under a duty to keep up their sales so far as they could, and to push the use of gas in any new ways which the public would use it. Even under municipal management, advertisement, when not pushed to the useless extreme which competition too often engenders, is a necessary function. In its proper sense it means, not the creation of a factitious demand by the familiar processes of repeated suggestion, but genuine information in such form as to reach the public."

In *Brooklyn Borough Gas Co. v. Prendergast,* 16 F. (2d) 615 (1926), the court, in overruling objections to items of actual operating expense, said, page 623:

> "Neither the defendants nor the court is charged with the management of the plaintiff; neither may, in the absence of a showing of mismanagement, inefficiency, or bad faith, substitute its business judgment for that of plaintiff's officers. After the fullest examination of the plaintiff's property, books, and method of management, and after testing the truth of plaintiff's witnesses by cross-examination, defendants presented no evidence of fraud, waste, or inefficiency in plaintiff's management. * * *
>
> "Defendants do not contend that the plaintiff did not actually incur every item of operating expense as claimed, nor do they suggest that the plaintiff bases its claim upon other than accurate books of account. They did not prove waste or inefficiency, and I see no reason for substituting the hypothetical judgment of the accounting witness for one of the defendants for the actual experience of the plaintiff in the operation of its business, and I am of the opinion that operating expenses should be allowed in the amount claimed and proved for the year 1923, of $1,020,039.39."

In *Monroe Gaslight & Fuel Co. v. Michigan Public Utilities Commission,* 11 F. (2d) 319 (1926), the court said, page 325:

> "* * * we see no reason why the discretion of the utility managers should have been revised. It is to be remembered, as has often been said, that the commission is to regulate rates but not to manage the business. The extent to which the utility managers should advertise and make efforts to get new business, or keep what they have, * * * are matters peculiarly of business management. * * * As to all disbursements actually made

> within the limits of good faith, the managers' discretion must stand, unless it is abused."

In *Citizens' Gas Co. of Hannibal v. Public Service Commission of Missouri,* 8 F. (2d) 632, 634 (1925), the court states:

> "The commission is not the financial management of the corporation, and is not empowered to substitute its own judgment for that of the directors of the corporation. There is no evidence of an abuse of discretion by the corporate officers in the matter of expenses."

And we call the court's attention again to the incisive language of the special master in the gas rate case reported in *New York & Richmond Gas Co. v. Prendergast,* 10 F. (2d) 167, 181 (1925), which so forcefully states the governing principles that the commission and state court have in this case been so ready to overlook:

> "* * * *The men who are skilled in the operation of a gas company must be presumed to have done their best, conscientiously and effectively, until the contrary is shown by competent evidence. Items of actual outlay may not be eliminated by the court merely because one or both of the defendants wish to cut out something.*"

We have already cited to the court additional decisions to the same effect, pp. 70-5, *supra.* This principle prohibiting infringement on the prerogative of management is not a mere platitude to be asserted and then disregarded. It is a vital principle, essential to the security of utility service as well as to the security of investments in utility property. No commission has the authority to disregard the fact, which is so succinctly stated by this court in *United Railways and Electric Company of Balti-*

more v. West, 280 U. S. 234 (1930), that in utility regulation "the fundamental principle to be observed is that the property of a public utility, although devoted to the public service and impressed with a public interest, is still private property; * * *." The burden and responsibility of managing a utility rests on those to whom the owners of the business have intrusted it, and it is not the function nor the duty nor within the right of the commission to interfere with the problems of operation until and unless mismanagement or abuse of discretion is shown to exist. In the present case there is not the slightest showing that either of those conditions existed. On the contrary, the evidence shows the management to be in the hands of competent men of long experience in the utility field.

The state court opinion asserts (R. 28) that: "The commission found *from the testimony* that the new business obtained by the gas company in Lima did not warrant the expenditure of $12,000 per year for new business —nor the half of it." No reference is made to indicate where any such testimony exists. The fact is that there is no basis for the assertion. Certain inquiries made by the commission and by counsel for the city of a company executive were along the line of suggesting that the results of the new business expenditures might raise a query as to the wisdom of making them. (R. 339-44, 453). But certainly the facts thus developed were not such as, by the wildest stretch of the imagination, could be deemed to have proved even any abuse of managerial discretion in these expenditures. On the contrary, that testimony served to establish more plainly the necessity for the outlay and the wisdom of the management in making it. Aside from the testimony given by the company, there was no evidence on the subject except the expense exhibit by the city taking the item fully into account and the following testimony by city witness Allensworth (R. 453):

"Q. Do I understand that in your opinion that new business expense is a proper charge? A. No, sir, I don't know that it is a proper charge, that is in amount. I have no criticism as to the entries made, but as to whether or not that is a proper amount, I would not say that it is.

"Q. Can you tell the Commission whether or not that expense is justified by increase in business, assuming that that department is entirely responsible for all increase that they may have? A. I do not think it is.

"CHAIRMAN HOPPLE: Your criticism goes to the fact that the amount spent is in excess of the results obtained?

"THE WITNESS: It so appears, yes, from the testimony of the company's witness."

We submit that there is nothing in any of the foregoing evidence that could be fairly relied upon as a justification for the commission's action in discarding approximately 60% of the actual expenses of the company for new business. Surely it cannot be said in the light of that evidence that there was any such showing as is necessary under the law if the judgment of a management is to be cast aside.

We refer the court to the following portions of the record, which we believe cover the complete testimony as to this item of expense: Record 339-44, 368, 373, 389, 416-8, 424, 453, 540, 543, 577, 582-9, 607-10; including Company Exhibit 104, pages 11 and 15; City Exhibit A-2, prepared by the company comptroller at the request of counsel for the city; and City Exhibit A-3, pp. 14-25. If the court has any doubt as to the necessity of allowing this item of expense in full, we ask it to read this testimony.

The state court's main attempt to justify its action in upholding the commission in eliminating more than $7,000.00 per year of the company's expenditures for new business was based upon the ground that there is no show-

ing in the record that the company had competition in its business. On this basis it made a feeble endeavor to distinguish existing authority. (R. 28). The conclusion of the court is unwarranted. The record shows plainly the necessity of the company making strenuous effort to preserve and increase its business. As the company comptroller trenchantly expressed the fact, "We have got to fight to keep what we have got and daily try to increase our gas sales to our customers." In the period here involved, industrial sales were increased from 9,941,200 cubic feet in 1927 to 32,320,000 cubic feet in 1931, and house heating increased from 2,698,800 cubic feet in 1927 to 12,489,200 cubic feet and 10,409,000 cubic feet in 1930 and 1931, respectively. (R. 577).

A review of the portions of the record above referred to will show the inaccuracy of the state court's assertion that there is no evidence of competition. Not only is competition shown by that evidence, but it is such a commonly known fact that such products as coal oil, coal and electricity as well as gas are used for domestic cooking, that such products as oil and coal as well as gas are used for house heating, and that such products as coal, oil and electricity as well as gas are used in industrial heating processes, that we submit that, if competition were an essential to the allowance of the expense and there had been no direct evidence of it, the court would be bound to take judicial notice of the fact that any gas company operates in a highly competitive field.

There is no basis whatsoever in the record to justify eliminating from operating costs, in fixing a rate, nearly 60% of these *bona fide* expenditures just discussed. It is plain that there is nothing in the evidence upon which to predicate any finding, or even suggest, that the managers of the company did not act "within the limits of good

faith'' or that managerial discretion was abused. We submit that the action of the commission and state court as to this item of expense was erroneous, and must be set aside.

5. General and Miscellaneous Expense.

There is much confusion in the labored explanation which the state court gives in endeavoring to support the general and miscellaneous expense item taken into account by the commission. In its opinion (R. 26), that court asserts that the commission allowed for general and miscellaneous expense the sum of $44,713.00 and then summarizes the objections of the company to this limited allowance. No such figure as $44,713.00 appears in the commission opinion nor was any such figure arrived at after taking into account the corrections and figures that counsel for the commission admitted should be made. The figure does however approximate the corrected figure for this item after rate case expense has been added thereto and spread over the five-year period covered by the rate ordinance. Such figure was $45,025.00 a year as shown in ''Appendix A'' hereto, pp. 181A, 182, *infra*. We at first thought that the last mentioned figure was the amount the court was referring to.

However, the discussion of the state court immediately following the figure shows clearly that the corrected figure was not the one considered, and the conclusion seems inescapable that, instead of the figure of $44,713.00,* the court intended to use the figure of $33,713.00, which is the figure for this item appearing in the commission's opinion. (R.

* Note: A like error was made by counsel for the commission in their purported statement of facts in their original brief. In copying that statement of facts the state court included the erroneous figure. (R. 22).

26). This conclusion is further supported by the fact that on page 316 of the court's opinion it sets out a table of average expenses per customer, which is the table originally relied on by the commission and which was clearly in error because of the miscalculations and omissions by the commission's expert accountants. (Appendix A, pp. 165-90, *infra*). Furthermore it is only by use of the $33,713.00 figure for general and miscellaneous expense that one can find any basis for the court's later statement that, if the operating expenses ignored by the commission were left out of account, the commission rates would produce a return in the neighborhood of 6% per annum for the years 1928 to 1931, both inclusive.

It is amazing that the court should have used these original figures after they had been admitted by everyone to be unreliable. It is even more amazing that the court should say (R. 26), in reference to general and miscellaneous expense, that "The alleged errors in calculation were treated fairly by the Commission," when even counsel for the commission had admitted in their briefs, and an analysis of the figures in evidence made it plain, that that portion of the general and miscellaneous expense that was included under general heading "H" in the annual reports, and which amounted to $9,784.28 for 1928, $10,357.76 for 1929, and $11,767.88 for 1930 (R. 669, 716, 762), had been missed by the commission accountants in developing their averages; when counsel had admitted in the agreed tables that the customer averages developed from the annual reports by those experts, was subject to revision (a fact that the figures in the record again indisputably establish); and when counsel had agreed, as the undisputed figures inescapably prove, that, even before the rate case expense was added, the average general and miscellaneous expense on the commission theory should with

correct figuring have been $39,235.00 instead of $33,713.00 per year. Upon adding the rate case expense, the general and miscellaneous item becomes $45,025.00 instead of the $33,713.00 per year. (See Appendix A, pp. 181A, 182, *infra*).

When the state court assumes even after these admissions to use the original figure named by the commission it becomes obvious that it has paid no attention to the briefs, the record or the oral argument, and has not had any comprehension of the corrections that it was recognized by everyone else had to be made. No stronger reason for the necessity in any event of sending this case back to the commission for corrected calculations could possibly exist than the confusion and the lack of understanding that the state court has shown in its attempt to deal with the blunders in mathematics made by the commission staff.

We do not believe it necessary to extend this argument by repeating here the analysis of the errors in the commission's calculations. In view of the confused treatment by the state court of this item of expense, we do respectfully urge this court to study that analysis as set forth in "Appendix A" 166-9, 171-7, 179-84, *infra*. Certainly, in fairness to the company, before this case is finally disposed of, either the reviewing court or the commission must make that study, must check the necessary corrections in figuring, and must take into account the full effect of making such corrections.

Such analysis will show that if the rate expense be spread over the five-year period the commission should have taken into account an average of $45,025.00 a year for general and miscellaneous expense even on its own theory of "customer averages." This is $2,532.80 less than the amount actually expended by the company for general and miscellaneous expense, the difference being

due to the "customer average" method of allocation which the commission adopted.

We submit that there is no justification for, and that there is reversible error in, the commission ignoring the company's method of allocation. The method is not only the one that the company has followed in keeping its accounts but is the accurate and correct one. It is a method that harmonizes with the nature of the expense item, whereas the commission method is wholly out of line with reality.

General and miscellaneous expenses are incurred principally for the company as a whole. Under this account are included the expenses of administration and other costs that have to do with the general management of the company. (R. 541, 545-8). Certain of the items are, however, incurred directly in connection with service in some particular community, and these are charged direct as a part of the cost of that service. Included among these direct costs are expenses in connection with rate controversies. (R. 544, 542). The other or joint expenses are first charged to a joint account and then allocated by the company monthly to each operating district upon the basis of the ratio between the gross revenue from gas sales in such district and the total gross revenue of the company from its gas sales. (R. 545-8). This method of apportionment was fully shown in the hearings before the commission and was in no way questioned in the proceedings. (R. 344-7, 349-50, 353-4). In fact it was adopted by the expert witness for the city who was in charge of the examination of the company's books. (R. 610-14, 453-5). It is obviously the most equitable basis of allocation in view of the nature of such expenses, which are somewhat analogous to overhead items in construction costs, and which within broad limits are but slightly, if at all, affected by the number of customers served. Certainly if the judgment of the man-

agement in this respect was to be attacked, the company was entitled to have this done by competent evidence introduced in the hearings.

There is no basis for the method of allocation used by the commission except it be found through a blind use of data in the annual reports of the company which were put in evidence by the commission after the hearings ended. As we have heretofore pointed out, the report calls for a consolidated figure for each item of expense, *i. e.*—the expenses in each community served are lumped into a single figure. The commission's method of treating these general expenses is plainly erroneous because under it general expenses incurred directly for one community are allocated between that community and other communities. This is improper as has been heretofore shown, pp. 90-6, *supra.*

The method is also unsound because it bears no rational relationship to the nature and character of the expense. Illustration of this is given by the fact that the method necessarily charges to a community the same amount of general and miscellaneous expense for the customer using 400 cubic feet of gas a month as it does for the customer using 100,000 cubic feet a month. No sound method of accounting would distribute general and miscellaneous expenses in such a way.

We submit that the commission erred in attempting to disallow the actual expenditures of the company for general and miscellaneous expense incurred in Lima service, and that the failure to include all such expense necessitates the reversal of the rate order.

We turn now to a discussion of that portion of the general and miscellaneous expense that was for rate case expense.

Counsel for the commission recognized that rate case expense should have been allowed. In their original brief

in the state court they thus explained the omission (Appendix A, p. 174, *infra*):

> "The commission was of course under the impression in taking annual report figures of the company that all its operating expenses incurred as of each year appeared therein."

They then continued (p. 174, *infra*):

> "We concur with counsel for the company that a reasonable rate case expense should be included * * *. There is no question here but that the company is entitled to a reasonable rate case expense as an operating expense inasmuch as the commission expressly found that the rates fixed in the ordinance appealed from were unjust and unreasonable (see Commission Order)."

Counsel suggested in their discussion, however, that the commission need only allow a reasonable amount for rate case expenditures and also suggested that the rate case expenditures in this case be spread over a six-year period "averaging $5,100 per year" (pp. 174-6, *infra*). This idea was based upon the claim that no new rate ordinance had been passed in Lima. The fact of the matter was that at the time counsel wrote the brief a new rate ordinance was pending before the council and was passed about the time the brief was filed. It was because of this fact that in the tables correcting the errors of the commission's accountants the then counsel for the commission consented that the rate case expense should be included in general and miscellaneous expense on a *five-year* amortization basis.

We have no quarrel with the claim that the commission is not bound to allow unreasonable expenditures in rate cases. Nevertheless the commission must determine the issue by the evidence and in the absence of any evidence

showing that the expenditures have been in an unreasonable amount the commission would not be warranted in arbitrarily ignoring the expense or any part thereof.

In the case at bar there was no claim advanced that the expenditures were improper or excessive. The company showed in detail the nature of the amount of its expenditures in appealing from the city ordinance to the commission. The appeal necessitated appraisal of all the property used and useful in Lima service, the preparation of many exhibits as to operating expense and earnings, and weeks of hearings before the commission. These expenditures are all set forth in Company Exhibit 102. (R. 542, 345-6).

There was no attack upon these expenditures in the rate case hearings. The witness for the city did not claim that the amount of the expenditures was unreasonable, but eliminated all rate case expenditures from his exhibit as to operating cost upon the erroneous view that the law did not permit such expense to be taken into account in determining rates. (R. 454-5). This was clearly a mistake in his understanding of the applicable legal principles, a fact that both the state court and counsel for the commission recognized.

The commission did not make any finding that the expenditures were not reasonable and necessary, nor did it refer to any elimination of the item of expense. It seems plain that the failure to take the expense into account was an oversight growing out of a neglect by the commission and its staff to make themselves familiar with the record in the case.

The state court held that a six-year basis of amortization would be proper. In view of the fact that the recent ordinance was, of course, passed after this case closed, and the fact of its enactment does not therefore appear in the record, we do not intend to argue further the point that

the five-year basis was the only just one. The effect either way on the rate of return is not determinative in this case.

The state court further took the position that even though the rate case expense were overlooked entirely the rate order need not be set aside. This, we submit, is clearly error. The necessity of making this expenditure increased costs, and reduced the already inadequate return earned, by an amount equal to more than one-fourth of one per centum a year on the rate base. This is a very substantial amount when a return has been limited in the manner attempted in this case.

Furthermore the rate case expense item is merely one of numerous improper deductions or omissions in determining operating expenses that the commission has made. If a sufficiently high rate of return had been allowed certain of these, standing alone, might not be sufficient, no matter how erroneous the act of disregarding it was, to necessitate a reversal of the final commission order. It must be self-evident, however, that the accumulation of even small errors cannot be overlooked, especially in a situation where, as in the case at bar, there are no compensating errors in the other direction. Some of the omitted items here complained of are, standing alone, of sufficient importance to render the rate order invalid in any event. Others, taken alone, might be of non-controlling importance. But, the accumulation of such errors in this case, has created a situation in which the company has most obviously been deprived of a compensatory return.

We respectfully submit that the treatment of general and miscellaneous expense by the commission is untenable; that its action in respect to this item must be set aside; and that, in fixing rates, the full amount of such expenditures as shown by the evidence to have been made, must be taken into account in determining the net earnings of the company from Lima service.

6. Excise Tax Expense.

The company assigns as error the fact that the commission in determining net earnings and return disregarded the fact that commencing with 1932 the excise taxes which had to be paid by the company to the state of Ohio were increased about $4,200.00 a year. In its opinion the state court asserts, page 313, that this assignment was not seriously pressed by the company. (R. 24). Such a representation is incorrect. The action of the commission in this regard was assigned as error and the assignment was fully presented and vigorously urged before the state court.

The facts about the situation may be quickly stated. By statute enacted in 1932, the excise tax payable by public utilities in Ohio was increased from 1.35% of gross revenue to 2.35% of such revenue. (See Appendix C, pp. 208-9). The first increased tax was paid in 1932. The fact of such increase was shown in the evidence. (R. 348-9). On the basis of 1932 revenues additional tax attributable to expenses in rendering Lima service would be about $4,200.00 a year.

The commission ignored the increase entirely. This, we submit, as was pressed before the state court, was an arbitrary disregard of an actual and substantial item of operating expense. The amount of such additional tax in 1932 must be taken into account in deciding this case.

7. Retirement Reserve Allowance.

We turn now to consider the rulings of the commission and the state court as to allowances for depreciation reserve and for the amortization of the company's transmission main. We recognize, in the light of this court's decisions at its last term, there is a burden on a utility of presenting proof as to the clear necessity of these reserves in the amount claimed. (See: *Dayton Power & Light Co. v.*

Public Utilities Commission of Ohio, 292 U. S. 290 (1934); *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio,* 292 U. S. 398 (1934)). But these decisions (which were handed down long after hearings in this case closed and while the appeal was pending in the state supreme court) do not, we submit, give the commission any *carte blanc* authority to act arbitrarily on this matter, or to disregard the situation disclosed by the evidence. Yet such is the nature of the commission action in the case at bar.

The commission reduced by more than $28,000.00 a year the amount set up by the company for retirement reserve (designated "depreciation charge" in the commission opinion). This made a total additional reduction in operating expenses of more than $140,000.00 for the five-year period. Such reduction in the reserve allowance is not warranted under the evidence.

The company's evidence shows that during each of the years in question, except 1931, it set up in its retirement reserve account for the Lima district, $53,639.00. (R. 530-6). The 1931 reduction was but a temporary measure taken because of the heavy decline in revenues for that year. The company contends that in determining rates in this case, retirement reserve allowance for that year should be at the normal figure. (R. 535, 331-2). If the commission had considered the 1932 report of the company, along with the others, the fact would have appeared that in 1932 there was $53,639.00 set up for retirement reserve.

The amount charged to the reserve was, except for 1931, at the rate of approximately 3% on the *depreciated* value of the depreciable property as appraised by the commission in 1925. (R. 521). The commission had several times before considered the matter of a fair annual operating expense allowance to this company and its pre-

decessor for retirement reserve purposes, and concluded that annual charges on a 3% basis were fair and reasonable.

In re West Ohio Gas Company, 22 Ohio D. R. 121 (1925).

In re West Ohio Gas Company, 24 Ohio D. R. 527 (1926).

In re West Ohio Gas Company, 24 Ohio D. R. 535 (1926).

In re Lima Natural Gas Company, Commission Cause No. 2360.

The purpose of the depreciation charge is "to compensate the utility for property consumed in service" and the utility is entitled to have this charge spread fairly "over the years of the life of the property."

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 254 (1930).

It is entitled as a matter of law to deduct from revenues "before coming to the question of profit at all" adequate sums to protect it fully against the exhaustion of its property in service. This fact was first pointed out by this court in *City of Knoxville v. Knoxville Water Company,* 212 U. S. 1 (1909). In the plainest possible terms, the court there stated the principle that is now settled beyond question, pages 13-14:

> "Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is en-

titled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the original investment remains as it was at the beginning. It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public service corporation at least, its plain duty to the public. If a different course were pursued the only method of providing for replacement of property which has ceased to be useful would be the investment of new capital and the issue of new bonds or stocks. This course would lead to a constantly increasing variance between present value and bond and stock capitalization—a tendency which would inevitably lead to disaster either to the stockholders or to the public, or both."

The scope of this reserve, and the factors to be kept in mind in building it up, have been expressed with great clarity by Judge Clayton in *Mobile Gas Co. v. Patterson*, 293 Fed. 208 (1923). Judge Clayton said, pages 223-4:

"When, however, depreciation reserve is considered, allowance must be made not only for depreciation of the best units which will survive and be on hand at any given time in the future, but provision should also be had for replacements of the poor units which will be sooner consumed or discarded as no longer economical. The proposition does not differ materially from the matter of life insurance, where it is plain that the average life of a given number of individuals will be less than the life of those individuals who outlive the others, from which it follows that the average premium necessary to provide the funds with which to pay the loss upon each life must be much higher than the premium which would be necessary to provide indemnity to the individual who would, in fact, live beyond his normal expectancy. In the same way, the annual depreciation suffered by those parts of

a gas plant which will survive is necessarily much less than the average depreciation which will be suffered by the whole, including those parts which will perish or have to be abandoned for economic reasons. So I cannot accept the defendant's conclusion that the depreciation reserve intended to provide a fund for the restoration of all parts of the gas plant as they perish or become inadequate or unavailable for any cause should be estimated at the same percentage as the depreciation which has actually occurred in those particular units which have survived the others. My conclusion is that a depreciation reserve of 2.5 per cent. to cover future obsolescence, inadequacy, and depreciation is *very conservative.* A depreciation reserve of 2.5 per cent. upon $2,000,000 is $50,000, * * *."

And the fact that annual charges at about such rate are fair and reasonable has been frequently decided by the authorities:

City of Belleville v. St. Clair County Gas & Electric Company, P. U. R. 1915F 235 (3%).

City of Winona v. Wisconsin-Minnesota Light & Power Co., 276 Fed. 996 (1921) (2½%).

City of Bellingham v. Puget Sound Power & Light Company, P. U. R. 1921E 5 (3½%).

Mobile Gas Co. v. Patterson, 293 Fed. 208 (1923) (2½% on cost new).

Re Jackson County Light, Heat & Power Company, P. U. R. 1926D 737 (2.75%).

City of Manitowoc v. Wisconsin Fuel & Light Company, P. U. R. 1927D 737 (3%).

Wichita Gas Company v. The Public Service Commission, 126 Kan. 220 (1928) (3%).

Fort Worth Gas Co. v. City of Fort Worth, 35 F. (2d) 743 (1929) (3.6%).

But regardless of whether the commission was required on this record to allow in operating expenses the full amount claimed by the company, it is plain that the limitation of the reserve allowance to the hopelessly inadequate amount of $24,518.00 that was fixed by the commission cannot be upheld. The city admitted that at least $35,579.32 should be allowed annually, and produced evidence to support such fact. Even if the company's evidence were ignored entirely (a thing that cannot legally be done), the record would require that the charge of $35,579.32 be allowed annually. And the rule of "*de minimis*" referred to by this court in *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio,* 292 U. S. 398 (1934), cannot apply here. The difference between the lowest reserve allowance possibly warranted under the evidence ($35,579.32) and the allowance made by the commission ($24,518.00) is more than $11,000.00. This sum reduces by more than 58/100ths of 1% a return that was already at a destructively low rate.

The witness for the city on this subject, Mr. Allensworth, claimed to have determined from an exhaustive and careful study the allowance of $35,579.32 advocated by him. (R. 582-9, 441-3). No one who reads the record would ever charge Mr. Allensworth with suggesting too high an allowance for the company on any item.

Mr. Allensworth's testimony, which, as has been stated, is the only evidence that could possibly be relied upon as a basis for reducing the amount actually set up by the company, is here reproduced in full:

> "Q. The next item is the item of $35,579.32 depreciation?
>
> A. Yes.
>
> Q. Is that figure found on the books of the company?

A. It is not.

Q. How do you arrive at that?

A. By making a study of the various classes and kinds of property comprised in the property used and useful in distributing gas to the city of Lima and taking thereon an annual charge for each particular class of property, of weighting that against the amount of property in each particular class, which produces the annual charge for depreciation so shown on this page in the amount of $35,579.32. That is in fact 1½ per cent of the Commission's final finding as to reproduction cost of property used and useful in the distribution of gas to Lima consumers.

Q. That is a theoretical figure?

A. Yes.

Q. This Commission has made a finding of the rate of depreciation to be used in arriving at present value of this property. I will ask you to state, Mr. Allensworth, whether in arriving at the figure of thirty-five thousand dollars plus, $35,579.32, you used the figures as found by this Commission.

A. I did. The Commission in making its finding as to sound value or reproduction cost less depreciation, found first reproduction cost, second the amount of depreciation on the various classes and kinds of property, and lastly the reproduction cost less depreciation. The amount of depreciation as found by the Commission is studied, divided by the years of life of the various classes of property which would give the annual rate of depreciation as found by the Commission in its final order as its sound value. That is proof of the rate at which the property has depreciated as such depreciation is found and reached by the Commission. Those facts, together with other facts, were taken into consideration in making this determination of 1½ per cent of the Commission's reproduction cost as being a proper annual charge for depreciation.

Q. So I understand that that rate is comparable to the depreciation found by this Commission in this case in arriving at the valuation?

A. Yes, it is.

COMMISSIONER BRICKER: You have not taken just the arithmetical figure from the amount in the depreciation reserve and calculated that as against the remaining life of the property?

THE WITNESS: No, sir.

COMMISSIONER BRICKER: Have you taken into consideration those unobserved elements of depreciation which the statute contemplates in arriving at your annual charge?

THE WITNESS: Yes, sir.

Q. (By Mr. Light.) As a matter of fact from the books of the company what is the expense experience of the company on depreciation?

A. The actual experience of the company in meeting the expense of depreciation over the seven-year period 1925 to 1931, was at the rate of 59/100 of 1 per cent per year *of the company's book value* of the property. The average for the last five years, that is five years ending December 31st, 1931,—the actual experience of the company in keeping its expense of depreciation is one-half of one per cent of the company's book value of property. That is the company's experience on the property as a whole and not segregated to the city of Lima. For the information of the Commission, *if the company's actual experience is measured in terms of the Commission's finding as to reproduction cost, its actual experience is* 9/10 *of* 1 *per cent per year* in meeting this charge for depreciation, whereas the allowance I have made in my set-up is 1½ per cent per year."

It will be seen from the foregoing excerpt that the amount allowed by Mr. Allensworth was an amount deemed by him to be just sufficient to meet the annual realized depreciation and leave in the reserve for each year an addi-

tional amount equivalent to the average annual depreciation in value as found by the commission in its valuation order. This difference was the reason for the difference between the averaged realized depreciation of 9/10ths of 1% of cost of reproduction and the allowance of 1½% on the cost of reproduction that Mr. Allensworth made. Certainly no lower allowance than the city suggested could possibly be sustained. That represents the very minimum, and it gives nothing for that margin of safety to which the company is fairly entitled.

The principle followed by the city witness on this phase of the case was fundamentally sound. The quarrel which we have with his testimony is not with his general principle, but with his losing sight of some essential factors. His error is due to his neglecting the facts that there were no substantial retirements in the short period that he considered, that the period he took was too brief to give a fair picture of the average annual realized depreciation on this type of property, and that the average life which he assumed for the property was obviously much in excess of what the actual average life would be. Consequently his allowance is inadequate.

As has been pointed out by this court, the charge for this purpose "resembles a life insurance premium. The depreciation reserve, to which it is credited, supplies insurance for the plant against its inevitable decadence, as the life insurance reserve supplies the fund to meet the agreed value of the lost human life." (*Pacific Gas & Electric Company v. San Francisco*, 265 U. S. 403, 423 (1924).)

In making his calculation of an annual allowance of $35,579.32, the witness for the city assumed that the actual average annual retirement experience for the property would remain as low as that indicated by the company's six years' experience. This assumption is not warranted.

The very low rate of retirement indicates such fact. And we trust that the court will again pardon us for a suspicion, —that perhaps one of the reasons why the commission was unwilling to put in evidence the 1932 report of the company was because it tended to give confirmation to the unsoundness of Mr. Allensworth's premise. Before one can reach a reasonably safe annual realized depreciation average, one must be able to take into account a period long enough to include the retirement of at least some of the larger units of property. Unless the company being considered has available that experience, and the period taken into account includes such major retirements, the assumed average is bound to be, as is the one here taken, far lower than the real one.

That this is true in the instant case is amply illustrated by consideration of the following facts. The reserve allowance made by the commission would be adequate only if the entire depreciable property of the company had an *average* useful life of more than 95 years.* The amount of reserve allowance admitted proper by the city, would in fact be adequate only if the company's depreciable property had an *average* useful life of more than 65 years.** Even under the reserve allowance that the company is asking, an *average* useful life of more than 44 years is necessary before the reserve proves sufficient.*** When

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*NOTE A: Determined by dividing $2,345,459.15 (the reproduction cost of the depreciable property as found by the commission adjusted for net additions to the end of 1930) by the annual reserve allowance of $24,518.00 made by the commission. Possible factor of net salvage not considered.

** NOTE B: Determined on basis stated in Note A, with $35,579.32 used as divisor.

*** NOTE C: Determined on basis stated in Note A, with $52,539.40 used as divisor.

one considers the many substantial items in the property account of the company, such as meters, services, gas manufacturing apparatus, general equipment and automobiles, whose useful lives are far below even the *average* under the company's retirement charge rate, it is plain that the allowance taken by the management is conservative, and that there is no justification for any revision thereof. For example, the evidence shows that the original gas manufacturing sets installed in Lima have been entirely replaced. The two 8'6" gas sets now in use were installed in 1910, and the 9'0" set was completed in 1924. (R. 248, 556-7). And the commission in this case has indicated that in its opinion the use of the existing gas manufacturing plant should be discontinued. (R. 90).

The conservative nature of the charge is also made clear by consideration of the following:

> Sailers "Depreciation, Principles and Application" (1923), pages 537-9.
>
> Depreciation Studies, Preliminary Report of the Bureau of Internal Revenue, Treasury Department, January, 1931, pages 1-2, 29, 33.

We desire to stress again that an allowance of less than the $35,579.32 which the city's evidence supported is wholly contrary to any evidence in the case; and under the evidence is clearly too low. The chief witness for the city testified that $35,579.32 a year was the proper allowance. There is much in the record to show that this amount is too low. There is nothing whatsoever in the record upon which to predicate the approval of anything less. The evidence of the city's witness shows that the actual experience of the company in making retirements during the seven years of its existence was at the rate of 9/10ths of

1% a year on the *cost of reproduction new* as fixed by the commission in this case. Translated into dollars, this testimony is that the average annual retirements of the company over the seven-year period would equal approximately $20,250.00. (See commission valuation order; R. 84A). This leaves but $15,000.00 a year, approximately, to protect the diminutions of the investment through accrued depreciation in the property not yet retired and to care for increases in the retirement rate.

The commission engineers found that such accrued depreciation in the property devoted to Lima service was in excess of $491,000.00 at the time of their inspection. (R. 629). Even if it be assumed that retirements would continue, and had always been, at as low an average rate as was the experience during the seven years of company history to 1931, *more than thirty-two years* would be required, under the depreciation rate advocated by the city's witness, to accumulate sufficient moneys to offset the accrued depreciation which the commission has found to exist in the property *now*.

With the same assumptions, there would, under the rate fixed by the commission in its order, be only about $4,000.00 a year to apply toward offsetting accrued depreciation in property in service. At this rate it would take *more than 120 years* for the company to secure a sum of money equal to the amount by which the commission has reduced its rate base because of alleged accrued depreciation *now existing*.

We submit that, in sustaining the commission action as to the depreciation allowance, the state court not only has lost sight of the fact that there is no evidence to support the limiting of the allowance to the inadequate sum of $24,518.00, but also has disregarded the fact that the situation which the evidence shows would exist under such a limited allowance proves conclusively that such allowance

is hopelessly insufficient. On the present record any allowance below $35,579.32 a year is arbitrary, invalid, and contrary to any evidence whatsoever.

We further submit that in determining net earnings in this case, there should be taken into account as an item of expense, the $52,539.40 annual retirement reserve allowance claimed by the company.

8. Allowance for Amortization of Pipe Lines.

The commission eliminated entirely from operating expenses allowed the company, the item of amortization of its investment in its gas transmission main or pipe line. This item is one previously allowed by the commission in fixing rates. The court upheld the commission treatment of the item.

The state court's ruling as to amortization appears to have been based on two things. First, that it had been decided in the case of *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio,* 127 Oh. St. 169 (1933), that the Ohio statute did not permit the commission to make an allowance for amortization; and, secondly, that it was unfair to permit the amortization allowance if the value of the property was included in the rate base.

Since the decision by the state court in the *Columbus* case, this court has decided in *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio,* 292 U. S. 398 (1934), that the federal constitution requires that an amortization allowance be taken into account in a situation where confiscation would result if such allowance were not made. We submit that under the circumstances of the case at bar, the commission could not legally reduce the rates unless there were excessive earnings after allowing a fair amount for the amortization item.

The allowance for this item was claimed by the company under the following circumstances: In 1922 it ap-

peared that natural gas could not long be obtained for use in connection with serving Lima. The company had a gas pipe line extending eastward 44 miles from Lima where it connected with the pipe line of an independent company having a natural gas supply. Because of the then unavailability of sufficient natural gas and the fact that it appeared likely that within a few years no natural gas could be obtained by the company and the pipe line would therefore be rendered useless, the company asked and obtained from the commission permission to amortize its investment in this pipe line. (R. 520-1). The commission erred, however, in estimating future revenues, and the company revenues, under rates fixed, were never large enough to permit it to earn any of the amortization allowance. In none of the years since the company has operated has it earned from Lima service sufficient to give it a reasonable rate of return. (R. 528B). It has, therefore, never obtained from its rates this amount for amortization. In spite of this fact, the company has each year since its organization, except in 1931, set up on its books an item of amortization of the pipe line equivalent to one-half of the amount authorized by the commission. In view of the lack of earnings, this item, of course, came out of the already unduly low return earned by the company, and was not, as was intended, an additional amount contributed by the rate payers who used the property.

Statements in the opinion of the state court show that that court took the position that the company was seeking to amortize the property through operating expense and also to include that same property in the rate base on which it insisted it was entitled to a return. If such were the situation, the court's criticism would be entirely sound. But that is not the case. As has been stated, the evidence establishes that in the past the company has never had

sufficient earnings to enable it to amortize any part of the transmission main except by taking a portion of its inadequate earnings for that purpose. (R. 528B). Such reserve as the company did set up was made possible by a sacrifice by the owners of the company of a part of their already grossly inadequate return. It was not a capital contribution by the rate payers. In valuing the property the commission reduced the transmission main valuation by more than $132,000.00 upon the sole theory that an order authorizing amortization had been made. (R. 84A, 300-1). Through this reduction, $132,000.00 of the value of the property devoted to the public service was arbitrarily taken out of the rate base. In this situation, fairness and equity requires the allowing of the amortization item until $132,000.00 has been returned to the owners of the property. It would be a gross denial of justice to the investors in the property if the rates of the company were reduced prior to the time that the rate payers have contributed, in addition to a compensatory return, an amount which with interest equals the $132,000.00 by which the valuation of the company's property has been reduced. The equity of the case is all on the side of the company. We submit further that the requirements of the fourteenth amendment necessitate the making of the allowance under the situation shown by the evidence here.

We believe the state supreme court has refused to give due weight to these facts. We submit that in view of them and in the light of the recent decision of this court in the *Columbus* case, an allowance for the item of amortization must be made.

The exclusion of the item will not serve to make the rate order a constitutional one. There are many other factors that necessitate a reversal of the rate order. That such is the fact, does not, however, warrant judicial ap-

proval of the commission's treatment of the item. It should, properly, be deducted in determining net return, and this court should so rule.

IV.

The State Supreme Court Erred in that it Did Not Find that the Commission, in Computing the Return Earned by the Company, Failed to Calculate Accurately what the Revenue of the Company would be for the Ordinance Period either under the Existing Rates or under the Rates Provided in the Rate Order.

The commission has used as a basis for all of its calculations an assumed average annual revenue derived by the company from gas utility service in Lima throughout the ordinance period of $482,904.50. (R. 121). This is obviously greater than the actual revenue was, and the record, in spite of the commission's refusal to consider the facts as to 1932 revenues and expenses, indicates clearly that the average taken is too large.

The commission based its average on revenues for the four years ending with 1931. The record shows that 1930 revenues were approximately $20,000.00 below those of 1928 or 1929, and that 1931 revenues were about $54,000.00 below those for either of such years. The company was denied an opportunity to show the fact that revenues were still lower in 1932 (R. 110), but without such showing, such fact would be fairly assumed in the light of the generally known experience in the utility and other business fields during that year. Anyone who reads, knows the effect of economic conditions upon utility revenues in 1932, particularly during the last half of the year. Furthermore, the commission had this fact before it in the 1932 annual report of the company, which it arbitrarily ignored

while considering the other reports. The truth is that the 1932 revenues from Lima service were, under existing rates, but about $11,000.00 more than the $416,000.00 of revenues that the commission claims would remain after a refund of about $60,000.00 for the year; and the company was prepared to show these facts if the commission had not denied a rehearing. (See R. 108, petition for rehearing, assignment No. 31. See also, pp. 27-8, *supra*).

But even on the record as it now stands, it was error to assume the average earnings for the ordinance period were the average shown by the four-year test. The least that could be justified would have been the according of a double weighting to the reduced revenues of 1931.

Likewise, the commission over-estimated the revenue that would remain to the company if the rates named in the rate order were established for the five-year period. The commission made no estimate as to the effect of the rate as applied to the fifth year of operations. Nor did it in its opinion give any clew to the method by which it concluded how much the revenues for the first four years would be. The first disclosure of this was in the brief of counsel for the commission. (See Appendix A, pp. 170, 170A, *infra*). This revealed that errors of calculation and disregard of the facts had brought about an erroneous estimate, and that, correctly figured, the revenues for the four-year period would average $416,225.04 under the commission rates instead of $428,509.47. The necessity of making this correction was admitted. (See Appendix A, pp. 177-9, *infra*); but the state court apparently disregarded the fact in reaching its decision. (R. 32). That court likewise lost sight of the fact that revenues for 1932 would be far below the average of $416,225.04.

V.

The State Supreme Court Erred in that it Upheld a Rate Order under which the Company would Not have Earned a Compensatory Return. To Avoid Confiscation an Annual Return Greatly in Excess of the Return that would have been Earned under the Commission Rates must be Allowed. Even Existing Rates Did Not Give the Company a Compensatory Return during the Ordinance Period.

We think it is clear from the foregoing discussion that the unjustified reduction or elimination of items of operating expense necessarily renders invalid, and calls for a reversal of, the rate order of the commission in this case.

The record shows that the rates ordered in effect by the commission would produce an average revenue of approximately $416,000.00 a year during the first four years of the ordinance period. (Appendix A, pp. 179A, 183A, *infra*). The true operating expenses of the company averaged slightly more than $384,000.00 a year for the four-year period, pp. 64-5, *supra*. If these actual costs are considered, there remains for return, under the commission order, about $32,000.00 a year, or 1.7% on the commission valuation of the company's property, exclusive of net additions since March, 1928. The order is clearly violative of the fourteenth amendment of the federal constitution, and, of course, cannot be sustained.

The fact is that under existing rates the company has not earned during the four-year period the 6% annual return that the commission apparently recognized was the minimum the company should have. Under present rates Lima service during the four years produced an average annual net return for the company of less than $99,000.00, or about 5.2% on the $1,901,696.26 valuation fixed by the commission in this case. And if the commission had permitted the facts to be shown, the company would have established that earnings in 1932 were only about 4%

on the valuation. Yet the commission by its order has attempted to compel the company to refund approximately two-thirds of these meager net earnings.

It cannot be seriously contended that a return of even 5.2% is high enough to be lawful or fair for this company. Under existing rates the company has never had sufficient earnings to justify the payment of common stock dividends as high as 4% in any year, and during four of the eight years of its existence, it has paid no common stock dividends whatsoever. (R. 553-4). The total surplus of the company accumulated under existing rates was, at the end of 1931, less than $40,000.00, p. 51, *supra.*

At the outset of our discussion of this issue of an adequate return, we desire to set out a brief summary of the net earnings that would appear to exist as different groups of operating expenses are excluded in figuring net returns. This will serve to correlate the effect of the disregard of the different items of actual expense that has been attempted by the commission.

We shall summarize first the real situation at the end of 1931.

Taking into account the actual operating costs of the company, the net earnings available for return and the return on the rate base (unaugmented by net addition since 1928) would, under existing rates, be as follows for the four years considered by the commission (See pp. 21-2, *supra*):

Year	*Net Earnings*	*Per Centum Return on Rate Base of $1,901,696.26*
1928	$117,634.68	6.19%
1929	98,617.09	5.19%
1930	99,451.52	5.23%
1931	79,083.12	4.16%
Average	98,696.60	5.19%

As shown on page 22, *supra,* the earnings for 1927 were but $86,837.08, which was a return of but 4.5% on the rate base established in this case and a return of but 3.9% on the rate base fixed in the 1925 rate case. (R. 520).

The commission refused to give the company an opportunity to show the facts as to earnings for 1932. (R. 110-1).

We shall summarize next the various situations which would exist if the commission rate order were applied to the four-year period and some or all of the operating expenses disregarded by the commission be left out of account in determining net return.

(a) It is only as a result of clerical errors, which are clearly disclosed by an analysis of the record and which have been heretofore discussed in detail, that an apparent average annual return of 6.65% for the four-year period is obtained under the commission rates. The undisputed facts in the record, as well as counsel's admissions, establish these errors and we may therefore disregard without further comment the claim in the commission order that the rates directed to be put into effect would have produced any such return for the period.

(b) If actual operating costs as shown in the evidence by the company were all considered, the return for each of said four years under the commission rates would be as follows:

Year	*Net Earnings*	*Per Centum Return on Rate Base of $1,901,696.26*
1928	$ 49,104.36	2.58%
1929	32,132.96	1.69%
1930	31,262.38	1.64%
1931	15,622.74	0.82%
Average	32,030.61	1.68%

(c) If operating expenses be limited as attempted by the commission but rate case expense be taken into account (i. e., approximately $71,500.00 of actual expenses being disregarded), apparent return for each of said four years under the commission rates would be:

Year	*Amount considered as available for Return*	*Per Centum Return on Rate Base of $1,901,696.26*
1928	$116,100.11	6.11%
1929	103,128.51	5.42%
1930	107,152.58	5.63%
1931	88,116.96	4.63%
Average	103,624.54	5.45%

(d) If operating expense be limited as attempted by the commission and the rate case expense which was overlooked by the commission be also disregarded (*i. e.*, approximately $77,500.00 of actual expense being omitted for each year), then under the commission rates the apparent return for each of said four years would be:

Year	*Amount considered as available for Return*	*Per Centum Return on Rate Base of $1,901, 696.26*
1928	$121,131.11	6.37%
1929	109,837.51	5.78%
1930	111,863.58	5.88%
1931	94,825.96	4.99%
Average	109,414.54	5.75%

(e) If all the company's actual cost for gas produced and purchased, distribution expense, commercial expense, new business expense and general and miscellaneous expense be taken into account, but retirement reserve allowance be limited to the $35,579.32 as advocated by the city,

and no allowance be made for the amortization of pipe lines, then under the commission rates the apparent return for each of said four years would be:

Year	*Amount considered as available for Return*	*Per Centum Return on Rate Base of $1,901, 696.26*
1928	$ 89,000.42	4.68%
1929	72,029.01	3.79%
1930	71,158.43	3.74%
1931	55,518.79	2.92%
Average	71,926.66	3.78%

(f) If all the company's actual cost other than retirement and amortization reserves be taken into account, and the retirement reserve be limited to the amount of $24,518.00 taken into account by the commission and no allowance be made for amortization of pipe lines, then under the commission rates the apparent return for each year over the four-year period would be:

Year	*Amount considered as available for Return*	*Per Centum Return on Rate Base of $1,901, 696.26*
1928	$100,061.70	5.26%
1929	83,090.29	4.37%
1930	82,219.71	4.32%
1931	66,580.07	3.50%
Average	82,987.94	4.36%

We think it evident from the foregoing tables that even if the commission were upheld in every attempted elimination of operating expense, the rates fixed by the commission are confiscatory and limit the return of the company far below the minimum return at which it can legally be compelled to serve. We submit further that most, if not

all, of the attempted eliminations of expense are improper and illegal. We submit also that even under existing rates the company did not obtain an adequate and compensatory return and that in such a situation it could not be legally compelled to refund to its customers any portion of the revenues that it had received during that period.

As this court has many times pointed out, it is essential in determining what is a confiscatory regulation of rates "to consider the actual effect of the rates imposed in the light of the utility's situation, its requirements and opportunities."

Smith v. Illinois Bell Telephone Company, 282 U. S. 133, 160 (1930).

Wabash Valley Electric Co. v. Young, 287 U. S. 488, 501-2 (1933).

Los Angeles Gas & Electric Corp. v. Railroad Commission of California, 289 U. S. 287, 319-20 (1933).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 249-252 (1930).

Bluefield Company v. Public Service Commission, 262 U. S. 679, 692-5 (1923).

This rule has been frequently repeated and applied by the federal statutory courts and the state courts that have been called upon to decide issues of confiscation. We call the court's attention to a recent application of it by a federal statutory court in Ohio.

Ohio Associated Telephone Co. v. Geiger, 3 F. Supp. 997, 1004 (1933).

The undisputed evidence shows that the company is now paying 7.07% per annum for capital funds secured through the sale of bonds; and 8% per annum for such funds pro-

cured through the sale of preferred stock. Its average annual cost for the capital moneys raised through the sale of preferred securities is about 7.50%.

All the securities of the company have been *authorized* by this commission, and issuance thereof was approved after a valuation of the properties to be acquired by the company had been made. This valuation was made less than four years before the passage of the ordinance involved in this case. Those securities were limited by the value of the property then determined by the commission. But 50% of the securities authorized to be issued were bonds and preferred stocks. (R. 553).

The evidence further shows that a limited amount of money, which was secured, again with the commission's approval, for capital purposes by the sale of bonds in 1931, is costing the company approximately 6½% per annum.

In its opinion the state supreme court has given but scant consideration to this vital issue of a compensatory return. Its sole discussion of the problem is a confused reliance upon a portion of the decision of this court in *Ohio Utilities Company v. Public Utilities Commission of Ohio,* 267 U. S. 359 (1925), which does not touch the subject of rate of return, but considers the question of an adequate allowance for the undistributed overhead item of "interest during construction" to be taken into account in estimating the cost to reproduce the property. (R. 32).

The state supreme court did, however, comment critically upon the high cost of capital required in rendering the service. In so doing it has apparently closed its eyes to the unavoidable factors that caused this situation. Lima is located in the northwestern part of the state, in territory where (until within the last three years), natural gas was not available in sufficient quantities to make possible any assured or satisfactory supply, pp. 10-2, *supra.* During

the years when the company's predecessors attempted to give natural gas service, the supply that could be had was uncertain and oft-times inadequate when most needed. The inescapable result was that there was curtailment in use, and even then in order to make the supply stretch as far as possible, a frugal use of the product by consumers was essential. The inadequacy of supply finally led to the necessity of a choice between continued inadequacy of service or the installation of manufactured gas service. The company, with the approval of the commission after public hearing and less than three years before the rate ordinance here involved, changed over to a manufactured gas. That its service since has been a most satisfactory one to consumers is clearly shown. (R. 130-2, 143-5, 156).

If one is to deal intelligently with this matter he cannot overlook, as the state court apparently has, the fact that late in 1924, the commission, after a public hearing, authorized the issuance of the company's outstanding securities and the payment of such interest rate as it found to be necessary in order for the company to secure capital funds. Likewise the commission passed upon and authorized the bond issue in 1931, when $300,000.00 of additional capital funds, which cost 6½% per annum, were sold.

It must not be forgotten that the past financial history of the utility involved did not enable the company to find a market for its securities at low rates of interest. As the state supreme court found in *City of Lima v. The Public Utilities Commission,* 106 Oh. St. 379 (1922), one of the predecessors of the West Ohio Gas Company had in twenty years of operations declared but two dividends on common stock. These were each 10%, making an average return on common stock of about 1% a year for the twenty-year period. The other gas company in Lima in 1920 had increased rates sustained by the state supreme court, and

the opinion shows that even those rates provided only the actual costs of operation, without any substantial amount for return. (*City of Lima v. The Public Service Commission,* 103 Oh. St. 501 (1921).) The present management of the company has improved the situation to such a degree that existing rates provide some, though an inadequate, return. Even so, the earnings are not such as to enable the company to command a ready market for its securities or to obtain new capital at a low price. And certainly the ability of the company to attract investors has not been benefited, but has been seriously handicapped, both by the unreasonable rate ordinance of the city and by the attempt on the part of the commission in this case to destroy even the inadequate earnings which the company has had.

In 1925 the commission found that in order for rates to be reasonable, they must be established on a basis designed to produce at least a 7.8% annual return. (R. 521). The commission in its order greatly overestimated the probable revenues of the company, and the estimated return was never earned.

As we have heretofore pointed out, the company, although it averaged common stock dividends of less than 2% a year during its eight years of operations, had left for surplus a total amount of less than $40,000.00 at the end of 1931. Yet the commission in this case has fixed rates requiring refunds totaling more than $330,000.00 in Lima alone.

As the table on page 131, *supra,* shows, the return which the company has received under the rates fixed in the 1925 order is, and has been, for each of the four years considered by the commission, actually at a rate far less than the cost of procuring the capital invested in the business, or even the cost of that portion of such capital as was secured through the sale of bonds. The company is

entitled to a return at a rate greater than the cost of money raised by senior security issues. This has been pointed out by this court in the clearest of terms.

In *McCardle v. Indianapolis Water Company,* 272 U. S. 400, 419 (1926), it was said:

> "It is obvious that rates of yield on investments in bonds plus brokerage are substantially less than the rate of return required to constitute just compensation for the use of properties in the public service. Bonds rarely constitute the source of all the money required to finance public utilities. And investors insist on higher yields on stock than current rates of interest on bonds. Obviously, the cost of money to finance the whole enterprise is not measured by interest rates plus brokerage on bonds floated for only a part of the investment. The evidence is more than sufficient to sustain the rate of seven per cent. found by the commission. And recent decisions support a higher rate of return."

In *United Railways and Electric Company of Baltimore v. West,* 280 U. S. 234 (1930), it was held that the utility was entitled to establish the rates it had proposed, which would yield to it a return of approximately 7.44%, and that the imposition of rates yielding less than this would be confiscatory and in violation of the federal constitution. This court held that the commission-imposed rates which would produce a return of 6.26% were clearly inadequate, and said that it was not certain but that, if the company insisted, rates securing a return of 7.5% or even 8% on the value of the property would be necessary in order to avoid confiscation. After commenting upon the fact that for moneys borrowed since 1920, the company had been compelled to pay an average rate in excess of 7%, this court said, pages 251-2:

"It is manifest that just compensation for a utility, requiring for efficient public service skillful and prudent management as well as use of the plant, and whose rates are subject to public regulation, is more than current interest on mere investment. *Sound business management requires that after paying all expenses of operation, setting aside the necessary sums for depreciation, payment of interest and reasonable dividends, there should still remain something to be passed to the surplus account; and a rate of return which does not admit of that being done is not sufficient to assure confidence in the financial soundness of the utility to maintain its credit and enable it to raise money necessary for the proper discharge of its public duties.* In this view of the matter, a return of 6.26 per cent. is clearly inadequate. In the light of recent decisions of this Court and other Federal decisions, it is not certain that rates securing a return of 7½ per cent. or even 8 per cent. on the value of the property would not be necessary to avoid confiscation. But this we need not decide, since the company itself sought from the commission a rate which it appears would produce a return of about 7.44 per cent., at the same time insisting that such return fell short of being adequate. Upon the present record, we are of opinion that to enforce rates producing less than this would be confiscatory and in violation of the due process clause of the Fourteenth Amendment."

And in *Bluefield Company v. Public Service Commission*, 262 U. S. 679 (1923), the court in holding unconstitutional a rate order designed to limit return to 6% said, pages 693-5:

"The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support

its credit and enable it to raise the money necessary for the proper discharge of its public duties. • • •

"Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors. The fact that the company may not insist as a matter of constitutional right that past losses be made up by rates to be applied in the present and future tends to weaken credit, and the fact that the utility is protected against being compelled to serve for confiscatory rates tends to support it. In this case the record shows that the rate of return has been low through a long period up to the time of the inquiry by the commission here involved."

Numerous decisions passing on the question of confiscation through rate orders, establish the necessity of the allowance of an 8% return if confiscation is to be avoided in imposing rates on the utilities involved. Many of these were cited by this court in support of its statement in the *West* case in 1930 as to the necessity of a 7.5% or 8% return for that company. Many of them cover rates attempted to be fixed during or presumably for at least a part of the period covered by the rate ordinance in this case. And most of them involve utilities larger and with opportunities to secure money upon terms decidedly better than those which the company in this case could possibly have.

Wichita Gas Co. v. Public Service Commission of Kansas, 2 F. Supp. 792 (1933). (8%).

Denver Union Stock Yard Co. v. United States, 57 F. (2d) 735, 745, 754 (1932) (7½%).

United Fuel Gas Co. v. Public Service Commission of West Virginia, 14 F. (2d) 209, 212 (1926); aff. 278 U. S. 322 (1929) (8%).

New York Telephone Co. v. Prendergast, 36 F. (2d) 54, 67-9 (1929) (7% for telephone companies is proper even though gas and electric companies entitled to 8%).

Interborough Rapid Transit Co. v. Gilchrist, 26 F. (2d) 912, 924-5 (1928) (8%).

Brooklyn Borough Gas Co. v. Prendergast, 16 F. (2d) 615, 622, 638 (1926) (8%).

Kings County Lighting Co. v. Prendergast, 7 F. (2d) 192, 194-5, 218; aff. 272 U.S. 579 (1926) (8%).

New York & Richmond Gas Co. v. Prendergast, 10 F. (2d) 167, 186-7 (1925) (8%).

Southern Bell Tel. & Tel. Co. v. Railroad Commission of South Carolina, 5 F. (2d) 77, 88-89 (1925) (8%).

Brooklyn Union Gas Co. v. Prendergast, 7 F. (2d) 628, 672 (1925) (8%).

Consolidated Gas Co. of New York v. Prendergast, 6 F. (2d) 243, 273-4, 280 (1925) (8%).

Springfield Gas & Electric Co. v. Public Service Commission of Missouri, 10 F. (2d) 252, 255 (1925) (8%).

New York & Queens Gas Co. v. Prendergast, 1 F. (2d) 351, 370 (1924) (8%).

New York Telephone Co. v. Prendergast, 300 Fed. 822, 826 (1924) (8%).

City of Minneapolis v. Rand, 285 Fed. 818, 830 (1923) (7½%).

Mobile Gas Co. v. Patterson, 293 Fed. 208, 221 (1923) (8%).

Southwestern Bell Telephone Co. v. City of Ft. Smith, 294 Fed. 102, 108 (1923) (8%).

Brush Electric Company v. City of Galveston, 262 U. S. 443, 445 (1923) (8%).

Galveston Electric Company v. City of Galveston, 258 U.S. 388, 400 (1922) (8%).

Lincoln Gas & Electric Light Company v. City of Lincoln, 250 U.S. 256, 267 (1919) (7% to 8%).

In the recent *Wichita Gas Co.* case, *supra,* the federal court made its finding as to necessary return, as follows (Finding XVIII) (2 F. Supp. 792, 810):

> "A return of approximately 8 per cent. upon present values is necessary, under present conditions, to assure confidence in the financial soundness of the Cities Service Gas Company, to maintain its credit, and to enable it to raise money necessary for the discharge of its public duties. Any return substantially lower than that would be confiscatory. *United Railways & E. Co. v. West,* 280 U. S. 234, 252."

And in explanation of the basis of the finding it pointed out, pages 810-11, that a gas utility

> "• • • must find a market in a highly competitive field. It competes with coal and fuel oil in household heating and for industrial purposes; the competition of fuel oil is particularly formidable for household heating; improved oil burners are automatic, approved by the National Board of Fire Underwriters for safety, are as clean as gas, and dependable. Electricity has absorbed the household lighting and is making serious inroads on cooking. In short, it must search for and find its gas; transport it hundreds of miles without an hour's interruption; then find and satisfy its customers. The law contemplates that it make no more than a fair

return in good times; it should not be forced to take less, when times are hard. • • •

"What is a proper return is a question of fact in which the elements of time and place play an important part. In this part of the Middle West, it is a recognized fact that in normal times, public utilities must promise a return of approximately 8 per cent., if capital for construction and extensions is to be attracted from other investments. • • • The witness for the commission testified that 8 per cent. would not be an unreasonable return in normal times, but testified that these times are abnormal, as they are. But if abnormality is considered, the return must be increased, not decreased. In these times, when stock of the best utilities can be purchased on a 9 per cent. basis or better, certainly an 8 per cent. return on this hazardous enterprise is not unreasonable."

We have not lost sight of recent decisions of this court and other courts upholding rates of return substantially lower than the return which in our judgment must be allowed in the case at bar.

Lindheimer v. Illinois Bell Telephone Co., 292 U. S. 151 (1934).

Dayton Power & Light Co. v. Public Utilities Commission of Ohio, 292 U. S. 290 (1934).

Nor would we want this court to think that we challenge the sound principle that in passing upon this question of return, the court in determining the issue of confiscation, and the commission in determining whether a reasonable return is something above the line of confiscation, should give due weight to general economic conditions as they existed from time to time through the period for which the rates were effective. We do submit, however, that this court should not lose sight of the fact that the present rate

order is retroactive and assumes to fix rates for 1928, 1929 and 1930 as well as for 1931 and 1932.

Undoubtedly these and other recent decisions will be strongly relied upon here by counsel for the commission just as they were in the state court. Counsel will, we presume, urge here as there that the decisions are blanket approvals of returns as low as the return (whatever that amount may be), which they may seek to establish that the commission allowed the company in the case at bar.

We desire to point out, however, that in those decisions the courts have not lost sight of the fundamental fact that, while the factor of general economic conditions is to be carefully weighed, it is equally true that the financial situation of the specific company involved, and its financial history and the price that it is having to pay for its capital, are likewise factors of prime importance in determining the confiscation level. These recent decisions have in no sense departed from the sound and long-followed view that what may be a compensatory return for one company will be inadequate and confiscatory for another and that the problem in each case includes the financial needs as shown by the facts there established.

For example, *Wabash Valley Electric Co. v. Young,* 287 U. S. 488 (1933), involved an electric property that operated through extensive territory. Its capital was supplied through the sale of securities of a parent corporation, which the opinion indicates had a ready and favorable market. After reasserting, in the language of *United Railways and Electric Company of Baltimore v. West,* 280 U.S. 234 (1930), the test of adequacy of return:

> "• • • that sound business management required that after paying all expenses of operation, etc., 'there should still remain something to be passed to the surplus account;' and that a rate of

> return which did not admit of that being done was not sufficient to enable a utility to maintain its credit and raise money for the proper discharge of its public duties"

this court examined the financial situation of the company which showed that it had accumulated a surplus of over $1,250,000.00 as compared with a total stock and funded debt liability of about $4,500,000.00, and concluded that the return which would be earned under the rates fixed and which was estimated to have been "much in excess of 7 per cent on the value fixed" during the period considered by the master and the lower court, was sufficient to avoid confiscation.

Again, in *Los Angeles Gas & Electric Corp. v. Railroad Commission of California,* 289 U. S. 287 (1933), the rates attacked had been fixed on a basis to produce at least a 7% return on the fair value of the property as determined by the commission. This was a 7.7% return on the historical cost of the property, since in that case the fair value fixed by the commission was nearly 10% higher than that historical cost. This court determined that the return allowed was compensatory as applied to that company. It reached its conclusion after a review of the general principles hereinbefore discussed, and grounded its conclusion upon the assertion that "applying these principles, and *considering the financial history of the company,*" the court could not conclude that the return allowed was so low as to be confiscatory. The financial history of the company is discussed by the court near the beginning of its opinion. In the body of the opinion the court states:

> "The growth was financed by the sale of the company's bonds and preferred stock. These, according to the finding of the Commission, had been

> marketed at a gradually lessening cost so that, at the time of the hearing which resulted in the order under review, it was found that the 'annual cost of its bond and preferred stock money' was 6.17 per cent."

And in a note the court says:

> "Note No. 1.—Reviewing the financial history of the Company, the Commission found: 'On Dec. 31, 1929, the company had outstanding in the hands of the public $47,070,000 par value of bonds, $19,469,995 par value preferred stock, and $20,000,000 par value of common stock. Its depreciation reserve on that date was reported at $16,804,105.15. All of its common stock is owned by Pacific Lighting Corporation. Since 1916 but $4,500,000 of this stock has been purchased for cash, $5,500,000, however, having been distributed to Pacific Lighting Corporation in the form of stock dividends, representing earnings left in the property. Dividends have been paid on its common stock of 7.20 per cent per share ($100 par value) in 1916, 1917, and 1918; 7.4 per cent in 1919; 8.4 per cent in 1920, 1921, and 1922; 8.7 per cent in 1923; 33.75 per cent in 1924, included in which is 25 per cent as a stock dividend of $2,500,000; 9 per cent in 1925; 9.815 per cent in 1926; 35.17 per cent in 1927, which includes a stock dividend of 21.42 per cent, or $3,000,000; 15 per cent in 1928, and 17 per cent in 1929. The company's surplus has grown from $381,212.97 in 1916 to $4,176,663.09 in 1929, while its depreciation reserve increased from $3,804,383.36 to, as said above, $16,804,105.15.' 35 C. R. C., pp. 447, 448."

The essentialness of keeping fully in view the actualities of the situation in the specific case being presented has been emphasized again in this court as recently as the decision in *Lindheimer v. Illinois Bell Telephone Co.*, 292

U. S. 151 (1934). This court there reviewed fully the financial history of that company and then pointed out that "this actual experience of the Company is more convincing than tabulations of estimates." Summarized, in the language of this court in the prior appeal of that case, that history showed that the cost of capital to the Illinois company was low enough, that under existing rates it had been able

> "• • • to expand its business so as to meet increasing demands, to pay its operating expenses including interest on money borrowed, to pay dividends of eight per cent. upon its capital stock and to accumulate a surplus." *(Smith v. Illinois Bell Telephone Company,* 282 U. S. 133 (1930).)

The final decision re-asserts the sound fundamental that in a confiscation case rate of return is not a matter to be decided by a blind application of a percentage, but by a study of the situation of the company whose rates are under attack. This principle applies with as much force in a case where its application requires the sustaining of existing rates, as it does in a case where its application justifies a reduction.

We believe that an application of the principles to which we have called the court's attention necessitate the reversal of any order of the commission that attempts to impose on the company a rate that would not produce an annual return of at least 8% for the rate period. If so, it is evident that even the existing rates were not compensatory. But regardless of whether or not the court approve that view, the fact here is that any return that would be produced under the rates fixed by the commission order is so low as to destroy any basis for rationally claiming that the order can be upheld.

VI.

The State Supreme Court Erred in Not Finding that the Validity of the Rate Order must be Determined by its Effect on Net Earnings from Year to Year; and that the Rate Order and the Order to Refund were Invalid because this Requirement had not been Complied with.

The commission paid no attention to the commonly known fact that general economic conditions subsequent to 1931 were far worse than in 1931. This is a fact of which the courts and commissions take judicial notice. (*Atchison, Topeka & Santa Fe Railway Co. v. United States,* 284 U. S. 248 (1932); *Dayton Power & Light Co. v. Public Utilities Commission of Ohio,* 292 U. S. 290 (1934)). The commission assumed a situation in 1932 equal to the *average* of the four preceding years. This assumption was made in the face of evidence showing that both revenue and net return in 1931 were far below the four-year average. Not only that, but when, after the end of 1932, the company offered to show the facts for that year, the commission refused to hear them. (R. 530, 110-1).

The average annual net earnings for the four years, 1928 to 1931, both inclusive, are not a measure of the net earnings for the year 1932 and subsequently, and such fact is plainly demonstrated by the record. The rate fixed by the commission, even if it were sustainable for the four years prior to 1932, could only be deemed to produce a fair return for 1932 upon the assumption that the situation in 1932 would be the same as the *average* of the four preceding years. The record shows this assumption to be wholly unwarranted. It shows that net earnings from Lima district service for the year 1928 were 50% higher than those for 1931, and that net earnings for the years 1929 and 1930 were approximately 25% higher than those for the year 1931. (R. 530). It shows that in 1931 gross revenue

from Lima district service was $46,962.32 less than the average revenues for the three preceding years, and was $35,-221.74 *less than the average revenues for the four-year period of 1928 to 1931, both inclusive.* 1931 net earnings and gross revenue were, therefore, far below the four-year average. In view of the marked downward trend in economic conditions during the year 1932 and at least a part of the year 1933, it could not reasonably be assumed that the earnings of the company during 1932 would equal an average based on four years, *three* of which were, relatively speaking, the "fat years" referred to by the state court. The fact was that earnings for 1932 were substantially below those for 1931, and this the company offered to show in its petition for rehearing.

When these realities are kept in mind, it is apparent that the rate fixed by the commission could not in any event be lawfully forced upon the company for the year 1932 and subsequently. The validity of the rates for the period subsequent to the period considered by the commission in fixing the rates, must be determined by testing their current effect. The rates can be sustained for that part of the ordinance period subsequent to the period considered only if it can reasonably be found that they would produce an adequate return during that time.

Lindheimer v. Illinois Bell Telephone Co., 292 U. S. 151 (1934).

Smith v. Illinois Bell Telephone Company, 282 U. S. 133 (1930).

Atchison, Topeka & Santa Fe Railway Co. v. United States, 284 U. S. 248 (1932).

Galveston Electric Company v. City of Galveston, 258 U. S. 388, 400-1 (1922).

Banton v. Belt Line Railway Corp., 268 U. S. 413, 418 (1925).

We think under the authorities, it is likewise clear that, as to the entire past period in controversy, no rate or rates fixed, and no refund ordered, can be sustained as to any past year unless under such rates and after such refund the company would have earned a return during such year high enough to be non-confiscatory.

We submit that the commission method of attempting to make the rates applicable to an extensive past period and to whatever future period they are to apply, and its manner of determining the question of refunds due, is in conflict with the requirements laid down by this court. The validity of the rates through the past must be determined by testing their effect in each year in which it is attempted to apply them.

This court has long asserted the rule that the validity or invalidity of a rate ordinance at any time depends upon its actual effect at such time.

Thus in *Galveston Electric Company v. City of Galveston*, 258 U. S. 388 (1922), the court said at pages 400-1:

> "A rate ordinance invalid when adopted may later become valid, just as an ordinance valid when made may become invalid by change in conditions. *Municipal Gas Co. v. Public Service Commission*, 225 N. Y. 89, 96. Compare *Willcox v. Consolidated Gas Co.*, 212 U. S. 19; *Newton v. Consolidated Gas Co.*, ante, 165."

See also:

> *Banton v. Belt Line Railway Corp.*, 268 U. S. 413, 418 (1925).

And this principle has been frequently applied in framing decrees in cases when no present confiscation was found:

> *City of Knoxville v. Knoxville Water Company*, 212 U.S. 1, 19 (1909).

Lincoln Gas & Electric Light Company v. City of Lincoln, 250 U. S. 256, 268 (1919).

Willcox v. Consolidated Gas Company, 212 U. S. 19, 55 (1909).

Brush Electric Company v. City of Galveston, 262 U. S. 443, 446 (1923).

The decision of *Smith v. Illinois Bell Telephone Company*, 282 U. S. 133 (1930), further clarified the scope of this principle, and determined that where a controversy as to rates extends over a considerable period and a rate or rates are fixed applicable to the past period of controversy, the validity of such rate as applied to any year of this period must be determined upon the basis of its actual effect during such year.

In the *Smith* case, this court was dealing with the question of the validity of a commission rate order, as applied not only to the future but also to a seven-year past period during which higher rates had in fact been collected. It held that the validity of the rate order as to that part of the period in controversy which had passed, must be tested from year to year. It said, page 162:

> "A rate order which is confiscatory when made may cease to be confiscatory, or one which is valid when made may become confiscatory at a later period. *Des Moines Gas Company v. Des Moines*, 238 U. S. 153, 172, 173; *Lincoln Gas Company v. Lincoln*, 250 U. S. 256, 268, 269; *Brush Electric Company v. Galveston*, 262 U. S. 443, 446; *Bluefield Company v. Public Service Commission, supra.* In view of this fact, and *as the disposition of the amount withheld by the Company under the conditions of the interlocutory injunction will depend on the final decree*, there should be appropriate findings as to the results of the intrastate business in Chicago and the *effect of the rates* in question *for*

each of the years since the date of the Commission's order."

The mandate there given is plain. The federal statutory courts that have been called upon to apply it, have found no ambiguity in its directions.

Illinois Bell Telephone Company v. Gilbert, 3 F. Supp. 595 (1933).

Ohio Associated Telephone Co. v. Geiger, 3 F. Supp. 997 (1933).

In the latter case an Ohio federal statutory court applied the principle in a proceeding where a period of approximately six years was involved. The court, holding that the master erred in considering a single year's period only as the basis for testing the rate schedule, proceeded to find the net earnings during each year of the period. It said, page 1004:

> "The following rates of return are thus found: 5.60 per cent. (1925), 5.90 per cent. (1926), 6.17 per cent. (1927), 6.98 per cent. (1928), 7.61 per cent. (1929), 7.99 per cent. (1930), and 8.12 per cent. (1931).
>
> "It is interesting to note that this gives an average per cent. over the period of 6.93 per cent., which is slightly lower than that found by the court, based upon 1930 calculations, and about eight-tenths of 1 per cent. lower than that determined by the master. This rate as applied to the case under consideration is considered to be well within constitutional requirements.
>
> "No fixed rule as to rate of return can be laid down which would apply uniformly to all sorts of utilities (*United Railways v. West,* 280 U. S. 234, 249, 250, 50 S. Ct. 123, 74 L. Ed. 390) and very likely to utilities of the same class, but differently situated, as the equities would depend upon circum-

stances, locality, and risk, and other considerations. While neither set formulae nor mathematical accuracy are possible of attainment, in the consideration of such questions account must be taken of the rule that a rate order which is confiscatory when made may cease to be confiscatory, and vice versa. *Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133, 162, 51 S. Ct. 65, 75 L. Ed. 255; *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 172, 173, 35 S. Ct. 811, 59 L. Ed. 1244; *Bluefield Co. v. Public Service Commission*, 262 U. S. 679, 43 S. Ct. 675, 67 L. Ed. 1176. With more than five years under inquiry, divided into seven periods, showing a rate of return on an ascending scale, and dealing with this case and its equities alone, it may be fairly concluded that the rates of return shown for 1925, 1926, and 1927 do not measure up to the constitutional requirements, and that those beginning with the year 1928 are immune from constitutional defect.

"It is so ordered."

We submit that the principle is controlling in this case, and that it is essential to apply it before any refunds of moneys collected in the past under established rates can be lawfully ordered. And, *a fortiori*, it must be applied to the years of the ordinance period not taken into account in the averages.

VII.

The State Supreme Court Erred in Not Holding that the Rate Order is Invalid because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.

In support of this claim of error the company insists:

(a) It should have been permitted an opportunity to show on rehearing what the facts were as to its revenues, expenses and net earnings for the year 1932 and such part of 1933 as had elapsed prior to the date of the commission order; and

(b) If any of the annual reports of the company were to be made a part of the record, that the annual report for the year 1932 should have been included and the company should have had an opportunity to make what showing it deemed necessary in reference to that report. (We have already discussed the illegality of the action of the commission in respect to the use of the annual reports for the years 1928 to 1931, both inclusive, pp. 55-62, *supra*).

The company in its petition for rehearing requested the commission to receive such evidence, but the request was denied. The action of the commission in this respect was arbitrary, and would be prejudicial to the company in the event the commission rates were sustained on the present record. We shall discuss separately each of these claims.

(a) The evidence as to 1932 operations was not available when the hearings closed. The evidence as to 1931 showed clearly that, unless there was a decided improvement in economic conditions, earnings for 1932 would be far below any four-year average ending in 1931. That business conditions in 1932, especially during the last half of the year, were far worse even than in 1931, is a matter of such common knowledge as to warrant judicial notice. (See: *Atchison, Topeka & Santa Fe Railway Co. v. United States,* 284 U. S. 248, 260-2 (1932), *supra.*) The company had no reason to suppose either that the commission would ignore that reality, or that it would fail to give weight to the evidentiary facts of record that revenues and net return in 1931 were far below the average since 1927, and were decreasing. Upon finding from the commission order that the factor of the present had been ignored, the company promptly pointed out such fact, and also asked an opportunity to show its greatly reduced revenues during and since 1932. The making of such a showing became essential because of the nature of the

commission order and the commission's action in refusing to take into account the fact, which the record discloses, that earnings had been greatly diminished under the existing economic situation. The petition for rehearing set forth the fact that the business of the company had been further adversely affected by such economic conditions, and that the company would show that its earnings for the year were far below the average of the four years considered by the commission.

On page 313 of its opinion, the state court justifies the refusal of the commission to allow the company to show the effect of 1932 operations upon the ground:

> "To have considered the year 1932 would have required the Commission to revamp all the work it had done, and we do not think it abused its administrative discretion in refusing the application." (R. 25).

This is a recognition that the facts as to existing conditions would have shown that the averages of the past four years on which the commission relied were inapplicable to conditions in 1932 and subsequently.

In its ruling the state court overlooked controlling legal principles. As a result of the petition for rehearing it became the legal duty of the commission to receive the evidence. It must be apparent that when the figures were before the commission the work of revising its averages would not have been an extended task and the recognition that revision would have been required must also be a recognition that the rates already fixed could not have been constitutionally extended to 1932 operations if the facts as to earnings for that year were established. Even if there had been any prospect that the rehearing requested might have been long, it would not have justified the commission in denying the rehearing when the same was required by

essential demands of justice. We urge that as a matter of right, the company was entitled to make this showing before any order reducing its rates could lawfully be made. Such a view is sustained by the *Atchison Railway Company* case, *supra,* where this court set aside a rate reduction order of the Interstate Commerce Commission because that body had denied the carriers a rehearing to show the severe decrease in revenues suffered between the date of the closing of the hearings and the date of the order. In the opinion in that case it was said (284 U. S. 248, 262):

> "We are thus brought to the fundamental considerations governing the authority of the Commission. It has broad powers and a wide extent of administrative discretion, with the exercise of which, upon evidence, and within its statutory limits, the courts do not interfere. The important and salutary functions of the Commission to enforce public rights are not to be denied or impaired. But the Commission, exercising a delegated regulatory authority which does not have the freedom of ownership, operates in a field limited by constitutional rights and legislative requirements. Its duty * * * with respect to the prescribing of reasonable rates and the preventing of unreasonable or unjustly discriminatory or unduly preferential practices, has not been changed by the Hoch-Smith Resolution. *Ann Arbor Railroad Co. v. United States,* 281 U. S. 658, 669, 50 S. Ct., 444, 74 L. Ed., 1098. The legal standards governing the action of the Commission in determining the reasonableness of rates are unaltered. In the discharge of its duty, a fair hearing is a fundamental requirement. *Interstate Commerce Commission v. Louisville & Nashville Railroad Co.,* 227 U. S. 88, 91, 33 S. Ct. 185, 57 L. Ed. 431. In the instant proceeding, the hearing accorded related to conditions which had been radically changed, and a hearing, suitably requested, which would have permitted the presentation of

evidence relating to existing conditions, was denied. We think that this action was not within the permitted range of the Commission's discretion, but was a denial of right. The order of the Commission which was thus made effective, and the ensuing supplemental order, cannot be sustained."

(b) As we pointed out in the statement of facts, during the hearings the commission offered no evidence as to the expenses and net earnings of the company. The evidence on these matters thereafter introduced by it, consists solely of the four annual reports of the company for the years 1928, 1929, 1930 and 1931 that were put in the record without notice to the parties by an order dated three days before the final order was entered. At that time the commission had in its possession the company's annual report for the year 1932. Its failure to include that report in the record is hard to understand. Its refusal so to do, when the matter was specifically called to its attention, is utterly incomprehensible. Such refusal is not alone shocking to one's sense of equity and fairness, it savors inescapably of a deliberate attempt to ignore the reality of the facts. If this case, or any feature thereof, should be dependent on knowing the facts as to 1932 operations, then this court should require that the commission make this last report a part of the record, and give the company an opportunity to introduce such evidence in reference to the relevant matters contained therein as it may deem necessary.

VIII.

The State Supreme Court Did Not Make that Independent Judicial Review of the Law and the Facts which Due Process and Equal Protection of the Laws Require.

We do not question the salutary principle that in a judicial review of administrative action, courts do not interfere

with the exercise of a wide administrative discretion, if action within that realm is founded upon evidence sufficient to support it. This court has recently restated the same rule in pointing out that "for the legislative process, at least equally with the judicial, there is an indeterminate penumbra within which choice is uncontrolled."* We think it clear that nothing more than this was stated by this court in *Atchison, Topeka & Santa Fe Railway Co. v. United States,* 284 U. S. 248, 262 (1932), which was referred to by the state court in the case at bar.

The fact that the foregoing rule is true, cannot, however, furnish a justification or pretext for a court, when appealed to in a confiscation case, failing to perform its duties within the sphere reserved to it.

The judicial functions in confiscation cases have been clearly and repeatedly set forth by the decisions of this court.

The kind of a judicial review that should have been given in the case at bar was succinctly described in *Ohio Valley Water Company v. Ben Avon Borough,* 253 U. S. 287 (1920), where this court in reversing a judgment of the Supreme Court of Pennsylvania said, page 289:

> "In all such cases," (rate fixing orders) "if the owner claims confiscation of his property will result, the state must provide a fair opportunity for submitting that issue to a judicial tribunal *for determination upon its own independent judgment as to both law and facts;* otherwise the order is void because in conflict with the due process clause, 14th Amendment. * * * Thus far plaintiff in error has not succeeded in obtaining the review for which the 14th Amendment requires the state to provide."

**Dayton Power & Light Co. v. Public Utilities Commission of Ohio,* 292 U. S. 290 (1934).

In *Ohio Utilities Company v. Public Utilities Commission of Ohio,* 267 U. S. 359 (1925), a case coming up from the Ohio commission and through the state supreme court, this court reversed the final judgment of the Supreme Court of Ohio because of its failure to accord such a review in a case where the facts did not justify the commission order, saying, page 364:

> "From the foregoing, it is evident that the state supreme court did not accord to the plaintiff in error that sort of judicial inquiry to which under the decisions of this court it was entitled."

And in the very recent case of *State Corporation Commission of Kansas v. Wichita Gas Co.,* 290 U.S. 561 (1934), this court again said, page 569:

> "And upon the issue of confiscation *vel non* they are entitled to the independent judgment of the courts as to both law and facts."

To the same effect:

Bluefield Company v. Public Service Commission, 262 U. S. 679, 689 (1923).

Prendergast v. New York Telephone Company, 262 U. S. 43, 50 (1923).

Lehigh Valley R. R. v. Commissioners, 278 U. S. 24, 36 (1928).

United Railways and Electric Company of Baltimore v. West, 280 U. S. 234, 251 (1930).

Crowell v. Benson, 285 U. S. 22, 60 (1932).

Van Wert Gaslight Co. v. Public Utilities Commission of Ohio, 299 Fed. 670, 676 (1924).

Chesapeake & Potomac Telephone Company of Baltimore v. West, 7 F. Supp. 214, 230 (1934).

It is respectfully but most earnestly urged that had the state court attempted any real compliance with this duty it could not but have found that the commission order must be set aside. We submit that the bald conclusions of the state court on questions of fact are, like those of the commission, so manifestly against, and without support by, the evidence that they abundantly show that the evidence has not been considered.

As we pointed out in our application for rehearing in the state court, and as we have stressed in this argument, the statements contained in the court's opinion show beyond question that the court failed to read the record and the exhibits.

As we further pointed out, the court's conclusions in respect to the elimination of operating expenses are contrary to the uncontradicted evidence in the case.

As we further pointed out, the court below not only failed to examine the evidence and compute the actual revenues, expenses and net earnings under the commission's rates, but it also disregarded the actual tabulations which were prepared for it. Had it paid any attention to these tabulations, or, if not satisfied as to their accuracy, had it made its own investigation, the confiscatory nature of the commission's order would have been abundantly apparent.

We respectfully submit that the company is entitled to have the judgment of the state court set aside because of that court's refusal to perform its duty of giving the company an independent judicial review of the law and the facts involved in this case.

Conclusion.

We have, perhaps, trespassed upon the time of the court in this argument, but this case is of vital importance to our client and to the many individuals whose investments are in the property used in rendering gas utility service to Lima consumers. By its confiscatory effect, the rate order threatens the very existence of the company.

We feel too that there are issues in this case which are of paramount general importance. These are whether two basic and long settled principles are to be discarded. The first of these principles is that a finding by a regulatory body "without evidence is arbitrary and baseless," and "comes under the Constitution's condemnation of all arbitrary exercise of power." *(Interstate Commerce Commission v. Louisville and Nashville Railroad Company,* 227 U. S. 88 (1913)). The second principle is that in rate proceedings the actual costs of operation cannot be left out of account in the absence of proof of their unreasonableness. On this point we once more remind the court that, as to many of the items eliminated in the case at bar, there was no suggestion of challenge during the hearings by either counsel for the city or by the commission. If, in such a situation as the record here discloses, a commission is to be upheld in disregarding the costs of rendering the service, then constitutional protection for property devoted to public use is necessarily at an end.

It is, of course, apparent that when a company in its eight years of operation has not earned any substantial surplus, in spite of the fact that it has paid an annual average dividend of less than 2% on the common stock which the commission has recently authorized it to issue, its rates are not producing and have not produced excessive earnings. It is equally apparent that no toying with

figures by the commission's accountants can transform the inadequate earnings which the company had during the ordinance period, even under existing rates, into excessive earnings of over $330,000.00. We submit that the conclusion is inescapable that confiscatory rates have been imposed upon the company.

The gas rate ordinance passed by the city of Lima in 1928 was not passed in good faith as an endeavor to fix a non-confiscatory rate for the service. This was in effect admitted by the city's own evidence. We think it is equally indisputable that the commission and the state court in this case disregarded their duties under the law, and that the company has been denied that protection against the confiscation of its property to which it is entitled under the constitution of the United States.

We submit that an analysis of the evidence as to revenues and expenses shows inescapably that, as a result of mistakes in arithmetic and analysis by its staff the commission's order reduced the net earnings of the company far below the 6% return found by the commission to be the minimum that should be allowed. One cannot escape the result, shown by the figures in the record, that, even if the commission were upheld in every expense elimination that it made, the company's earnings would average less than 5.5% for the rate period and but 4.63% for 1931, the last year analyzed.

We believe any study of the record makes it abundantly plain that most, if not all, of the operating expenses disregarded by the commission cannot be lawfully ignored. And there are in this case no compensating errors "to supply a margin for the correction" for these illegal deductions. *(Dayton Power & Light Co. v. Public Utilities Commission of Ohio,* 292 U. S. 290, 305 (1934)).

We respectfully submit that the Supreme Court of Ohio erred in refusing to set aside the rate order, and in denying protection against confiscation; and that for the reasons herein presented, the judgment of that court must be set aside on this appeal.

Respectfully submitted,

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HARRY O. BENTLEY,
CHARLES C. MARSHALL,
Counsel for Appellant.

APPENDIX A.

Excerpts from briefs filed in the state court showing the arithmetical errors made by the accountants for the commission in attempting to determine the revenues under the commission rates and the amount of operating expenses under the commission theory of determining allowable expense.*

I.

EXCERPTS FROM ORIGINAL BRIEF FILED ON BEHALF OF WEST OHIO GAS COMPANY.

[65*] 2. *Distribution Expense*

The commission reduced the actual average distribution expense of the company by more than $5700 a year, or a total of $28,500 for the ordinance period. This reduction was made by assuming to find the average distribution expense per customer during the period for all communities served by the company, and multiply this by the average number of customers in Lima. (Commission Opinion, p. 4). The average distribution expense figure obtained by the commission by this method was $3.52 per customer, but we shall hereafter show that a true average was not found by the commission.

* * *

[69*] 3. *Commercial Expense*

The actual commercial expense for the company for the Lima district as shown by the books of the company was

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*NOTE: Star paging denotes page numbers in briefs filed in the state court.

reduced by the commission more than $800 a year, or $4,000 for the five-year period. This method of reduction was ac[70*]complished in the same manner as the reduction for distribution expense (Commission opinion, p. 4), and for the same reasons heretofore given, the commission method cannot be sustained.

* * *

5. *General and Miscellaneous Expense*

* * *

[77*]

b. The Commission Overlooked a Substantial Part of the General and Miscellaneous Expense.

In attempting to find the averages for this expense, the commission accountants failed to examine the reports carefully and missed part of the general and miscellaneous accounts. The company had reported these as called for in the printed instructions. General and miscellaneous expense in connection with artificial gas service is re-[78*] ported on page 32 of each annual report under the heading "VI—General and Miscellaneous Expenses." The classification for natural gas service is somewhat different, the general and miscellaneous accounts, being included among items under two headings, viz.—"H. General Administrative Accounts" and "I. Other General Expense Accounts." In building up its averages, the commission overlooked entirely the general expenses reported under heading "I." That the commission was inadvertent is shown by the fact that all items of general and miscellaneous expense (except deferred ones) were taken into account for 1931, in which year the company, with the approval of the commission, reported all its expenses under the artificial gas expense classification. (Commission Exhibit 4 of March 8, 1933, pp. 31-2.) The amounts thus overlooked

(after making allowance for items reported under heading "I" that on the company's accounting records [Company Exhibit 104], and in the commission opinion are treated separately, i. e., depreciation, amortization of pipe line, uncollectible consumers accounts, and indirect charges to construction) are $11,206.91 for 1928; $17,018.20 for 1929; and $7,047.83 for 1930. (Commission Exhibits 1, 2 and 3 of March 8, 1933, pp. 35-6.)

c. The Commission Failed to Find a True Customer Average for the Four-Year Period.

Even if it were proper to determine this expense in connection with Lima service by the process of "customer averages," the averages found by the commission are not the true ones for the period, and the commission results would be prejudicial to the company and to consumers in the other communities served.

[79*] We have already under the discussion of distribution expense items referred to the fact that the commission customer averages have been erroneously determined. As to those expenses the error of the commission in reaching its averages has comparatively slight practical importance, since, roughly speaking, those expenses increase in proportion to the number and size of the communities served. That is not true of joint general administrative expenses. They are substantially fixed costs of operating the company, and do not, except in cases of drastic change, vary substantially because the number of customers or communities served changes. Consequently, an error in determining customer average produces a quick distortion in the general and miscellaneous expense attributable to any community under the commission method.

Analysis of the figure of $3.44 taken by the commission to be the company's average annual general and miscel-

laneous cost per customer for the four-year period ending December 31, 1931, discloses that the sum was arrived at as follows: The commission totaled the general and miscellaneous expenses in connection with artificial gas service and a part of those in connection with natural gas service as shown on the company's annual reports for the four years considered. It then totaled the number of customers being served by the company at the close of each of these years as shown on the annual reports. It then divided the total of customers into the total taken for general and miscellaneous costs.

Such a method would have given a fair average customer figure for Lima of that portion of the expense con- [80*] sidered, *if* during the four-year period taken the company had continued to render service only in the communities served at the beginning of the period. But that was not the case. Sometime during 1930 the company commenced serving four additional towns. In these communities it had 317 customers at the end of 1930 and 470 at the end of 1931. During 1931 it commenced service in Delphos in which at the end of the year it had 1071 customers. Obviously, in such a situation, it is impossible to arrive at a correct customer average for the four-year period, by an arithmetical average. The taking of such an average, charges a part of the expense for certain of such years to communities not then being served. A weighted average must be taken.

We shall illustrate the error by an easy example. Assume that a company during each of four years served ten customers in each of the communities, A, B and C, or thirty customers. Assume next that in the fourth year it served thirty customers in an additional community, D. Assume further that its general expense was $300 during each of the four years. In this situation, the arithmetical average

taken by the commission would give a general average cost per year per customer of $8.00 [($300 × 4) ÷ (30 + 30 + 30 + 60) = $8.00]. In other words, the general expense allocated to each of the communities of A, B and C, for the period would be $80 a year, or $320 for the four years. And the general expense allocated to D for the one year it was served would be $8 × 30 or $240 or 80% of the entire general expense for the single year that D was served. The error is, of course, that D has [81*] been charged a part of the expense for the three years it was not being served, and, correspondingly, A, B and C have been freed from a portion of the general costs that during the first three years of the period had been incurred exclusively in connection with service to them.

The proper method, of course, would have been to determine the average customer cost for each year of the period, then find out during which of the years the community being considered was given service, add the average customer costs for such years only, and divide by such number of years. The use of such a weighted average would have brought a true customer average of such expenses as were being considered. But it would have increased to a sum nearer the actual, the commission figure as to general and miscellaneous expense in Lima service, — a result that the commission was laboring hard to avoid.

Furthermore, the averages are untenable because they ignored the customer situation for 1932. Although it was fixing rates for a five-year period, including 1932, and had before it in the company's annual reports the customer data for 1932, it refused to consider such data. The reason will be obvious when the report is in evidence. There was a falling off of customers in that year.

* * *

II.

Excerpts from Original Brief filed on behalf of the Public Utilities Commission of Ohio.

[13*]

A—Rate of Return.

The table opposite shows what would have been the gross revenues of the company computed at the commission rates on the volumes of consumption as shown in Company Exhibit 105. (See p. 170A, *infra*).

* * *

[17*]

B—The Commission's Method of Using Average Expenses for the Entire Period.

The company contends that the commission erred in not treating each annual period separately. While it is true that in the final order of the commission it shows average annual expenses (p. 4 of order), these were, of course, derived from the annual statements of the company, as appears from the table opposite: (See p. 170B, *infra*).

[19*] This table clearly shows how the commission arrived at the averages used by it.

* * *

[21*]

D—Distribution Expense.

* * *

[22*]

The commission took the view that a per consumer basis was the only fair way to allocate distribution expense and also commercial expense and general and miscellaneous expense. It, therefore, took the annual reports of the company from which it developed the following:

LIMA CONSUMPTION 97.8% OF LIMA DISTRICT.

		1928		1929		1930		1931	
		Cu. Ft.	*Revenue*	*Cu. Ft.*	*Revenue*	*Cu. Ft.*	*Revenue*	*Cu. Ft.*	*Revenue*
*First	1000 cu. ft. @ 1.57 per M. c. f.....	114,280,600	$179,420.54	115,382,600	$181,150.68	112,098,000	$175,993.86	109,662,400	$172,169.97
Next	3000 cu. ft. @ .95 per M. c. f.....	170,412,800	161,892.16	172,056,200	163,453.39	167,158,100	158,800.20	163,526,200	155,349.89
Next	6000 cu. ft. @ .95 per M. c. f.....	48,265,800	45,852.51	48,731,360	46,294.74	47,344,100	44,976.90	46,315,400	43,999.29
All over	10,000 cu. ft. @ .75 per M. c. f.....	62,338,500	46,753.88	62,939,500	47,204.63	61,147,800	45,860.85	59,819,200	44,864.40
		395,297,700	$433,919.09	399,109,600	$438,103.44	387,748,000	$425,631.81	379,323,200	$416,383.55

* 1st 400 cu. ft.....$1.00
Next 600 cu. ft. @ .95 per M. c. f..... .57

$1.57

Average Revenue for 4 years.....$428,509.47
Average Total Expense 302,025.92
(See Expense Table infra.)

Average Net Return .....$1[illegible]3,483.55
Valuation Rate Base $1,901,696.25
Average Return on Rate Base..... 6.65%

[18*]

EXPENSES	*Year 1928*	*Year 1929*	*Year 1930*	*Year 1931*	*Average*
(A) Cost of Gas Sold	$145,004.00	$153,448.00	$149,143.00	$138,704.00	$146,574.92
* Distribution Expense	37,870.00	35,892.00	31,855.00	33,954.00	34,892.75
* Commercial Expense	21,496.00	19,771.00	19,369.00	19,311.00	19,986.75
** New Business Expense	8,538.00	11,051.00	11,208.00	10,342.00	(B) 5,000.00
* General and Misc. Expense	34,153.00	40,758.00	28,021.00	31,940.00	(x) 33,713.00
** Indirect Charges to Const. (Cr.) (red)	1,827.00	2,588.00	8,400.00	2,401.00	3,804.00
(C) Depreciation	24,518.00	24,518.00	24,518.00	24,518.00	24,518.00
** Real and Personal Property Taxes	23,353.00	24,889.00	23,121.00	19,826.00	22,797.25
** Ohio Excise Tax	7,034.00	7,382.00	7,259.00	6,782.00	(y) 7,014.25
** P. U. C. O. Tax	286.00	282.00	265.00	280.00	278.25
** Income Tax	10,144.00	8,867.00	6,878.00	8,127.00	8,504.00
** Uncollectible Accounts	2,768.00	2,753.00	2,228.00	2,034.00	2,445.75
Total Expenses	$313,337.00	$327,023.00	$295,465.00	$293,417.00	$301,920.92
(B) Using Commission Allowance for New Business expense	$309,799.00	$320,972.00	$289,257.00	$288,075.00	

(A) Reduction of Company figures to reflect allowance of 7% for leakage instead of 9% claimed by Company.

(B) Allowed by Commission as reasonable.

(C) 1.4% on depreciable property ($1,751,288.80) in Lima.

* Annual Report figures allocated to Lima on per customer basis.

** Allocated to city of Lima on basis of 97.8% of figures in Company Exhibit 104.

(x) Correct average should be $33,718.00
(y) Correct average should be $7,114.25
} These corrections change total average to $302,025.92.

Number of Customers (From Annual Reports.)

Year	Entire Company Average	Lima
1928	15,209	10,045
1929	15,916	10,139
1930	15,912	9,832
1931	16,183	9,152

Dividing the total amount of distribution expense shown in the annual report for each year by the number of consumers in the entire system was found a per consumer cost for this item which is multiplied by the number of Lima consumers, as shown in the above table, thus arriving at the annual allowances for distribution expense shown in the expense table which produced the average of $34,892.75. Certainly there can be nothing unfair in this method of allocation.

• • •

[23*]

E—Commercial Expenses.

The commission in computing the allowance for commercial expense again took the exact amount shown by the company in its annual reports for each of the four [24*] years examined allocated to Lima on a per customer basis. The results of these calculations are shown for each of the years in the table of expenses.

• • •

[26*]

G—General and Miscellaneous Expense.

The company contends that the commission erred in treating this account in four regards: first, that the allocation method is untenable; second, that the commission failed to find a true per customer average; third, that the commission overlooked a substantial part of such expenses shown in the annual reports, and fourth, that no rate case expense was allowed.

• • •

[28*]

2. The company contends that the commission failed to find a true customer average. In connection with their argument on this point counsel seeks to show on page 80 of company brief by example that the commission method is in error. As a matter of fact the commission did not use the method which the company shows in its example. Using the same example the commission would have found a $10.00 per customer cost per year for the first three years and a $5.00 per customer cost for the fourth year so that had it been fixing an average per customer cost in the community for the four years it would have struck an average of $35.00 ÷ 4 or $8.75 per year. The whole example is, of course, erroneous in assuming that the company expense of $300 for the first three years would have remained unchanged upon the addition of thirty additional customers. The commission actually took the total amounts shown in the company annual reports for each of the items, distribution, commercial, new business and general and miscellaneous ex-[29*] pense, divided these amounts by the number of consumers as shown for each year hereinbefore and thus found a per consumer cost for each class of expense for each year. The averages as stated by the commission on page 4 of its finding represent the averages for the four years as shown by the following table:

Per Customer Averages of Expenses.
West Ohio Gas Company—Entire System.

	1928	*1929*	*1930*	*1931*	*Average 1928-31*
Distribution Expense	$3.77	$3.54	$3.24	$3.71	$3.56
Commercial Expense	2.14	1.95	1.97	2.11	2.04
New Business	.85	1.09	1.14	1.13	1.05
Gen. and Misc. Expense	3.40	4.02	2.85	3.49	3.44

Counsel for the company state at page 81 of their brief the use of a weighted average would have brought a true

customer average of such expenses as were being considered. That is exactly what the commission did, therefore, we submit that the company is simply misinformed when it attacked the commission's findings on this ground.

3. The company contends that the commission overlooked a substantial part of the general and miscellaneous expense. They show at page 78 of their brief the amounts which they claim the commission overlooked as being $11,206.91 for 1928, $17,018.20 for 1929, and $7047.83 for 1930. They are correct in stating that the commission overlooked the amounts under heading "H" in the natural gas portion of the annual reports for 1928, '29 and '30 but it is believed they are in error as to the amounts as we are unable to find such amounts as shown. As a matter of fact, the commission accountants over[30*]looked amounts in the annual reports under the heading "H", as follows: 1928, $9784.28; 1929, $10,357.76; 1930, $11,767.88. In checking this error the commission accountants also discovered that the item of "Uncollectible Consumers' Accounts" shown in the expense table supra (page 18), was also included in the totals of general and miscellaneous expense for each of the years so that it was allowed twice by the commission. In order to show this court the effect of these two errors we submit the following:

All figures taken from Annual Reports	*1928*	*1929*	*1930*	*1931*
Gen. and Misc. Exp. used by Com.	$117,118	$129,304	$110,302	$89,161
Less Depreciation and Amortization	65,347	65,347	65,347	32,674
Less Uncollectible Accounts (Allowed separately)	4,180	4,051	3,394	3,238
Total	47,591	59,906	41,561	53,249
Plus amount overlooked (Item "H")	9,784	10,358	11,768	None
Corrected Total	57,375	70,264	53,329	53,249

Corrected Allocation to Lima on per consumer basis	37,870	44,713	32,937	30,110
Corrected Averages to Lima for General and Miscellaneous Expense				$36,407.50

The above corrected average is $2689.50 in excess of the average shown on the expense table. Adding this amount to $302,025.92 we get $304,715.42 which, deducted from $428,509.47, being the average revenue computed at the rates fixed in the commission order, leaves $123,794.05 as the average net return. This is 6.5% of the rate base. We submit, therefore, that after making these corrections the rates fixed by the commission are not unreasonable.

[31*]

4—Rate Case Expense.

The company on page 13 of its Exhibit 104 sets up a showing of $30,607.69 as rate case expense which it claims is entirely excluded from the annual report figures filed with the commission. The commission was, of course, under the impression in taking annual report figures of the company that all its operating expenses incurred as of each year appeared therein. We concur with counsel for the company that a reasonable rate case expense should be included but the same argument applies to this account as to the item of new business expense. If a company is free to make any expenditures it deems fit for the purpose of fighting a rate case it can thereby defeat any rate fixed by a regulatory body. There is no question here but that the company is entitled to a reasonable rate case expense as an operating expense inasmuch as the commission expressly found that the rates fixed in the ordinance appealed from were unjust and unreasonable (see Commission Order). The language used by a three-judge Federal

Court in an opinion denying an application for an interlocutory injunction in the case of *Ohio Associated Telephone Company v. Geiger, et al.*, No. 837, rendered in April, 1931 (unreported), is quite pertinent here. The company in that case was seeking to enjoin telephone rates fixed by the commission for the city of Marion, Ohio. The court there said:

> "Doubtless, current legal expenses, necessary or incidental to the conduct of the business, are proper items of expense. Possibly, also, where the com[32*]pany is unavoidably thrown into proceedings for valuation and rate determination before the Public Utilities Commission, reasonable charges arising therefrom may be proper in the calculation of return for the years covered; but we do not see how such a charge is relevant to a consideration of the prospective effect, upon earnings, of newly established rates. Presumably the company is not to be burdened by similar charges throughout the coming years, and obviously such charges, if resulting solely from the desire of the company to obtain a greater return than would otherwise be reasonable, cannot be said to have any integral relationship to the economic and proper conduct of the business. In determining the reasonableness of the rates prescribed by the commission this item cannot be given consideration."

There is nothing in the record to indicate the reasonableness or unreasonableness of the figures claimed by the company except as they stand in Exhibit 104. If this court is of the opinion that the matter should be remanded for consideration in this regard the commission could investigate these claimed expenses and determine their reasonableness or if this court is of the opinion that the amount as claimed should be allowed in full it would involve the addition of a proportionate amount for each year to the

commission findings on expense. While the company contends that this should be amortized entirely over the period of the rate ordinance we respectfully call the attention of the court to the fact that the rate ordinance involved here has already expired, no new action having been taken by the city council of Lima. As this will not be a recurrent expense unless [33*] and until a new rate ordinance is passed in Lima we suggest that this rate case expense be spread over a period of six years averaging $5100 per year. Adding this amount to the average expense allowed by the commission, as corrected above, we get $118,700 as the average net revenue which is 6¼% on the rate base. The court will bear in mind that the commission's obvious intent, as shown throughout its order, was to fix a rate which would return the company not less than 6% on its fair value. It is, of course, impossible to fix rates which will bring in exactly the net revenue found to produce a certain exact percentage of return. We submit, therefore, that the commission fixed rates should not be disturbed even by the addition of rate case expense in the amount shown by the company.

III.

Excerpts from Reply Brief filed on behalf of West Ohio Gas Company.

[16*]

On page 29 of their brief counsel, in explaining the nature of the several errors made by the commission in attempting to determine average general and miscellaneous expense, claim that we were in error in calculating certain amounts, which we set forth on page 78 of our original brief as sums in the general and miscellaneous account that the commission had apparently overlooked.

They say that we stated those items were from Natural Gas Account—H, and that they are "unable to find such amounts as shown." If counsel had taken the time to read our brief, this claim of miscalculation would not have been made. We did not claim the figures were from "Natural Gas Account—H". They were figures from "Natural Gas Account—I" determined in the manner plainly stated on page 78 of our brief.

• • •

[18*]

The defense to the commission order, which its counsel attempt to make in their brief, is, we believe, fairly stated as follows:

It was claimed that the commission fixed rates that it thought would give an average return of 6.65% for the ordinance period. It was admitted that there were certain deductions in operating expenses made by the commission that were based on error, and should not have been made. It was then claimed that when the admittedly necessary corrections were made, there still remained average annual earnings of about 6% per annum for the ordinance period; that a 6% annual return was the return the commission had in mind to allow, and that an allowance of a return at such average rate for the years 1928, 1929, 1930, 1931 and 1932 was high enough to avoid confiscation. Therefore, counsel argue, the order should be sustained.

Upon a study of counsel's brief, we discovered certain errors in the table of alleged earnings under the commission's rates set out on page 13 thereof. We also discovered that in the revision of general and miscellaneous expenses, which the commission accountants attempted to make and which counsel set out in the revised table of such expense shown on page 30 of their brief, there were further errors. [19*] These we called to the assistant attorney general's

attention before the oral argument. We also then directed his attention to the fact that his suggestion for a six-year period for amortizing rate case expense, which was predicated upon the claim that there was no new rate ordinance pending (Deft. Bf. pp. 32-3), was entirely unjustified in the light of the fact that the common council of the city of Lima already had had prepared a new gas rate ordinance which provides for rates even lower than those named in the prior ordinance, and which had passed first reading,—a fact which could scarcely be deemed unknown to his co-counsel who are the city attorney and assistant city attorney for Lima. We do not believe it amiss to add that the ordinance has since been passed.

The foregoing mentioned changes were the further necessary corrections which counsel stated to the court in oral argument ought to be made before the court could see what the commission had in fact attempted to do in its order.

In order to make clear the effect of these changes, we shall point out briefly the nature of each of the above mentioned errors and set forth revised tables showing the results of the various corrections.

Counsel prepared their table of earnings shown on page 13 of their brief from certain data taken from Company Exhibit 105. That exhibit was introduced in order to show the unreasonableness of the rates provided for by the city ordinance. It showed that even if the Lima ordinance rate were applied to *all* gas manufactured at the [20*] Lima plant, including that sold in Lima for house heating and that sold to or in municipalities outside of the Lima district, still the total revenues would not be sufficient to pay operating expenses applicable to Lima district service alone. The exhibit we now recognize was somewhat confusing when an attempt was made to use it for some pur-

REVENUES FROM GAS SERVICE IN LIMA UNDER COMMISSION RATES

(On basis of using per centum of sales in each step and same rates per thousand cubic feet as shown in table on page 13 of brief for defendant)

Corrections as to Quantity of Gas Sold in Lima

		Year 1928	*Year 1929*	*Year 1930*	*Year 1931*
(1)	Total sales of manufactured gas in cubic feet—shown by Company Exhibit 105	404,189,900	408,087,500	396,470,300	387,856,000
(2)	Deduct manufactured gas sales outside of Lima district—Company Exhibit 104, pp. 5 and 6	.....	.....	7,899,000	25,974,800
(3)	Deduct sales of gas for House Heating in Lima district—Company Exhibit 104, pp. 3, 4, 5 and 6	5,706,400	9,086,000	12,489,200	10,409,000
(4)	Total deductions (item 2 and item 3)	5,706,400	9,086,000	20,388,200	36,383,800
(5)	Lima district sales after above deductions (item 1 minus item 4)	398,483,500	399,001,500	376,082,100	351,472,200
(6)	97.8% of Lima district sales to city of Lima (Percentage per table in brief for defendant, p. 13). (97.8% of item 5)	389,716,900	390,223,500	367,808,300	343,739,800

Corrected Showing as to Revenues

	Rates fixed by Commission	*Year 1928* Corrected Lima Sales (cubic feet)	*Year 1928* Revenue	*Year 1929* Corrected Lima Sales (cubic feet)	*Year 1929* Revenue	*Year 1930* Corrected Lima Sales (cubic feet)	*Year 1930* Revenue	*Year 1931* Corrected Lima Sales (cubic feet)	*Year 1931* Revenue
(7)	First 1,000 cu. ft. @ $1.57 per M. C. F.	112,667,100	$176,887.35	112,813,600	$177,117.35	106,333,400	$166,943.44	99,375,200	$156,019.06
	Next 3,000 cu. ft. @ .95 per M. C. F.	168,007,000	159,606.65	168,225,400	159,814.13	158,562,200	150,634.09	148,186,200	140,776.89
	Next 6,000 cu. ft. @ .95 per M. C. F.	47,584,400	45,205.18	47,646,300	45,263.99	44,909,400	42,663.93	41,970,600	39,872.07
	All over 10,000 cu. ft. @ .75 per M. C. F.	61,458,400	46,093.80	61,538,200	46,153.65	58,003,300	43,502.48	54,207,800	40,655.85
	Totals	389,716,900	$427,792.98	390,223,500	$428,349.12	367,808,300	$403,743.94	343,739,800	$377,323.87
(8)	Add actual revenue from, and cubic feet of, sales for house heating. (See Company Exhibit 104, pp. 3, 4, 5 and 6)	5,706,400	4,304.13	9,086,000	6,527.39	12,489,200	9,251.64	10,409,000	7,607.09
		395,423,300	$432,097.11	399,309,500	$434,876.51	380,297,500	$412,995.58	354,148,800	$384,930.96

pose other than that for which it was introduced. Counsel's error in making use of it arose through their overlooking the nature and purpose of the exhibit and using blindly the tables therein set forth without thought as to their purpose or scope, and without comparing them with Company Exhibit 104 which showed the actual consumption data for the Lima district. They also fell into error because they gave no consideration to the fact that the rates named in the commission order are higher than the existing special house heating rates of the company; and that, of course, the company cannot collect back from house heating customers the difference, nor can it abrogate the existing house heating rate if it expects to retain that class of business.

From the foregoing it appears that counsel's premise as to the earnings under the commission rates is untenable and must be revised in two important respects: (a) it includes gas sales to Delphos and the northern towns (see Company Exhibit 104, pp. 5 and 6), and (b) it does not make allowance for the lower revenues from house heating sales in Lima (see Company Exhibit 104, pp. 3, 4, 5 and 6).

We submit herewith a table of revenues under the commission rates, which is similar to the one set forth on page 13 of counsel's brief, but is corrected in the manner above stated. (For table, see p. 179A, *supra*).

[21*] We have submitted the foregoing corrected table to the assistant attorney general, counsel for the commission in this case, and we are authorized by him to state that he has approved the table as showing the estimated amount of revenues that would be derived by the company for the four years ending December 31, 1931, under the rates fixed by the commission in this case.

On page 30 of their brief counsel have attempted to correct admitted errors in the treatment of general and mis-

cellaneous expense by the commission. The attempted correction is incomplete. The fact that the item of indirect charges to construction was considered as a separate item by the commission, and that therefore such item should not be used to reduce the general and miscellaneous expense account, was overlooked. This error led to an omission of an annual average of over $3,800 of general and miscellaneous expense. The calculation in this table is further in error because of the method employed by the commission accountant in determining the number of customers served by the company in total and in the Lima district. (See Deft. Bf. p. 22.) In determining the number of customers for the entire company for any year, the accountant took the mesne between the total customers reported as customers at the end of the year being considered and at the end of the immediately preceding year.* In determining the Lima district customers served for any year, that method was abandoned and merely the customers reported at the end of the year being considered were used. There is, of course, no justification for this varia[22*]tion of treatment. The commission accountant made a further mistake in that, in determining the number of Lima district customers for 1929 and 1930, he neglected to include customers in Cridersville, which is within the Lima district. There is another error. In the entire company customer averages, the number for 1928, on the basis followed by the commission, should be 15,709 instead of 15,209. When these corrections are made, the customer averages under the commission's method, instead of being those shown on page 22 of counsel's brief, are as follows:

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*NOTE: For example the company's annual reports for 1928 and 1929 showed total customers of 15,925 and 15,907, respectively. The commission accountant used 15,916 [(15,925 + 15,907) ÷ 2] as the customers for 1929.

[23*]	*1928*	*1929*	*1930*	*1931*	
General and Miscellaneous Expense used by commission*	$117,118	$129,304	$110,302	$89,161	
Less Depreciation and Amortization	65,347	65,347	65,347	32,674	
Less Uncollectible Accounts. (Allowed separately)	4,180	4,051	3,394	3,238	
Balance	47,591	59,906	41,561	53,249	
Add Indirect Charges to Construction. (Red figure—Credited separately)	2,604	3,482	12,227	3,750	
Add amount overlooked by commission. (Natural Gas Account—H)	9,784	10,358	11,768	.....	
Corrected Total	$59,979	$73,746	$65,556	$56,999	
Corrected Allocation to Lima District on corrected per customer basis as shown, *supra*, page 22	$38,705	$47,008	$41,142	$33,616	
Corrected Allocation to Lima alone. (97.8% of Lima district allocation)	$37,854	$45,974	$40,237	$32,877	
Corrected Annual Average to Lima for General and Miscellaneous Expense on basis used by commission (exclusive of unamortized rate case expense)	.....	.....	.....		$39,235

*NOTE: All figures, except those shown as allocations, are taken from annual reports.

This table has been submitted to and approved by the assistant attorney general, who is counsel for the commission in this case, as showing the amount of general and miscellaneous expense (exclusive of unamortized rate case expense) taken into account by the commission under its method of determining such expense as adopted in this case.

Year	*Average Entire Company*	*Average Lima District*
1928	15,709	10,159
1929	15,916	10,153
1930	15,912	9,986
1931	16,183	9,550

We have corrected the errors above stated to exist in the table set out on page 30 of counsel's brief. As corrected, that table shows that under the commission method of allocation the average annual allowance for general and miscellaneous expense (exclusive of unamortized rate case expense) in connection with Lima service during the four years ending December 31, 1931, would be $39,235.00. The revised table follows: (For table, see p. 181A, *supra*).

[24*] Counsel admit that the commission was in error in ignoring the rate case expense of the company, and attempt to excuse the oversight by suggesting that the commission was confused in using the annual reports. (Deft. Bf. p. 31.) There was no reason for confusion. The rate case expense item was fully set forth in the company exhibits of operating expenses and explained in oral testimony. The oversight of the commission was a result of its refusal to consider the evidence.

Counsel suggest on page 33 of their brief that the expense be spread at the rate of approximately $5,100 a year over a six-year period instead of over the five-year period of the ordinance. This suggestion is predicated upon the claim of "no new action having been taken by the city council of Lima." (Deft. Bf. p. 32). The suggestion of a six-year, rather than a five-year period can scarcely be deemed to have merit, when as a matter of fact a new rate ordinance naming rates even lower than those fixed in the 1928 ordinance had already been prepared for, and was pending before the Lima city council,— a fact that

was well known to the city attorney for Lima who appears of counsel on the brief for the commission in this case. From an equitable viewpoint, the suggestion is further untenable because of the fact that no part of the rate case expense incurred subsequent to April, 1932 is taken into account. (See Company Exhibit 104, p. 13.) We submit, therefore, that the unamortized rate case expense should be distributed equally through the ordinance period, or at the average rate of $6,101.34* a year instead of $5,100 a year.

[25*] None of the unamortized rate case expense is included in the table on page 30 of counsel's brief. Spread on the five-year ordinance term basis, this rate case expense increases the commission figure for average Lima general and miscellaneous expense during the four year period ending December 31, 1931 to the following total:

Commission calculation of average general and miscellaneous expense for Lima, exclusive of unamortized rate case expense, (*supra*, page 23)	$39,235.00
Annual allowance for unamortized rate case expense spread on five-year basis	5,790.00**
Corrected commission calculation of average annual general and miscellaneous expense plus allowance for rate case expense	$45,025.00

*NOTE: $30,607.69 ÷ 5 — $6,101.34 (see Company Exhibit 104, p. 13).

**NOTE: Amount is less than the average annual amount of $6,101.34 for the ordinance period, because only nine months of unamortized rate case expense has been charged against 1928 operations and because of credits for certain rate case expenses included in general expenses during four year period (see Company Exhibit 104, p. 13).

	Year 1928	Year 1929	Year 1930	Year 1931	Four-year Average
Revenue under commission rates, *supra*, page 21 (table)	$432,097	$434,876	$412,996	$384,931	$416,225
Portion of actual expense considered under commission method corrected for errors in calculations, and including rate case expense*	315,997	331,748	305,843	296,814	312,601
Net available for return on valuation	$116,100	$103,128	$107,153	$88,117	$103,624
Per cent. of return on valuation of $1,901,696.26, unaugmented by net additions	6.11%	5.42%	5.63%	4.63%	5.45%

* Note: Determined as follows:

	Year 1928	Year 1929	Year 1930	Year 1931	Average
(1) Total expenses (Deft. Bf. p. 18)	$309,799	$320,972	$289,257	$288,075	$302,026
(2) Deduct General and Miscellaneous expense (Deft. Bf. p. 18)	34,153	40,758	28,021	31,940	33,718
(3) Deduct Distribution expense (Deft. Bf. p. 18)	37,870	35,892	31,855	33,954	34,893
(4) Deduct Commercial expense (Deft. Bf. p. 18)	21,496	19,771	19,369	19,311	19,986
(5) Total Deductions (Sum of items 2, 3 and 4)	$93,519	$96,421	$79,245	$85,205	$88,597
(6) Balance (item 1 minus item 5)	$216,280	$224,551	$210,012	$202,870	$213,429
(7) Add corrected General and Miscellaneous expense, taken into account by commission as per table, *supra*, page 23	37,854	45,974	40,237	32,877	39,235
(8) Add corrected Distribution expense—Redetermined on per customer basis as shown, *supra*, page 22	36,265	35,151	31,643	34,651	34,428
(9) Add corrected Commercial expense—Redetermined on per customer basis as shown, *supra*, page 22	20,567	19,363	19,240	19,707	19,719
(10) Add Rate Case expense amortized over a 5 year period, per Company Exhibit 104, p. 13	5,031	6,709	4,711	6,709	5,790
(11) Total additions (Sum of items 7, 8, 9 and 10)	$99,717	$107,197	$95,831	$93,944	$99,172
(12) Total expense taken into account by commission (Sum of items 6 and 11)	$315,997	$331,748	$305,843	$296,814	$312,601

When the foregoing corrections are made, the summary as to the average annual return which would have been earned for the period ended December 31, 1931, *if* the commission rates had been in effect, and *if* the *actual* cost of service *had been only* those costs taken into account by the commission, must likewise be corrected. So corrected,

[26*] the summary which appears in the table on page 13 of counsel's brief shows the following:

Average annual revenue for four years, *supra*, page 21 (table)	$416,225.00
Average annual expenses allowed for four years on commission basis after correction of errors and inclusion of rate case expense, determined as shown *infra*, page 27 (note)	312,601.00
Average net for return for four years on commission basis	$103,624.00
Valuation—Rate base as found by commission	$1,901,696.26
Average return on valuation unaugmented by net additions	5.45%

And on the same basis, the earnings for each of those four years, on the commission valuation, unaugmented by net additions, would have been but 6.11% return in 1928; 5.42% in 1929; 5.63% in 1930; and 4.63% in 1931, as is shown by the following table: (For table, see p. 183A, *supra*).

[27*] The entire foregoing table has been submitted by us to the assistant attorney general, who is counsel for the commission in this case. At his suggestion the necessary changes were made to put the distribution and commercial expenses, taken into account by the commission, on the per customer basis as shown by the revised table,

supra, page 22. He has authorized us to state that this table has been submitted to and approved by him as correctly showing the estimated net earnings from gas service in Lima for the four year period ending December 31, 1931, under the rates fixed by the commission *if* expenses be limited to those taken into account under the methods adopted by the commission in this case.

• • •

[49*]

e. General and Miscellaneous Expense.

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If counsel's explanation of the method by which the commission accountants arrived at their average is correct, then this difference is almost wholly due to the different methods of allocation used by the company [50*] and by the commission.*

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*NOTE: In our original brief, pages 79-80, we set forth the manner in which the four-year customer averages used by the commission appeared to be arrived at. The commission accountant who made up these averages had refused to inform the company as to his method. After numerous trials we found that under the method we outlined in our brief the average of $3.44 per customer for general and miscellaneous expense, which had been used by the commission, was obtained without the intervention of any error except the failure to include the proper items under "Natural Gas Account— I." We assumed that that must have been the method pursued. Counsel state that a different method was followed; and that the result was reached by the commission accountant using a weighted average basis, and including the proper items from "Natural Gas Account—I," but making the errors of not including the items in "Natural Gas Account—H," of failing to deduct the item of "Uncollectible Consumers' Accounts" and of

IV.

Excerpts from Supplemental Brief filed on behalf of The Public Utilities Commission of Ohio after the Reargument of the Cause.

[9*].

(A) Gas Produced and Purchased (Cost of Gas Sold).

The company claims that for the four year period from 1928 to 1931, both inclusive, which was the period used by the commission on the basis of the figures available to it, that the average cost of gas produced and purchased for said period per year was $150,361.75. The commission allowed for this same period an average cost of $146,574.92, making a difference of $3,786.83. The allowance by the commission should have been only $143,578.00 for the reason that the operating statistics shown in Exhibit "A" of the commission's opinion erroneously included sales to Delphos and other items, as explained on page 21 of the company's reply brief, where corrections were made and explained as they pertained to reductions in the M c. f. of gas sold and the revenues derived therefrom. By the same reasoning, a reduction in the M c. f. of gas sold would also result in a reduction in the cost of gas sold, but no correction of this item was made in the company's reply brief. However, in preparing the above exhibit, all figures on lines 1, 2 and 3 have been corrected to eliminate all factors not pertaining to Lima, not only in respect to M c. f. of gas sold and revenues, but also in respect to cost of gas

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failing to allow credit for the item of "Indirect Charges to Construction." As to the further mistakes of the commission accountant in attempting to correct these errors, see *supra,* pages 21-3.

sold. This would result in a difference of $6,783.75 instead of $3,786.83. (See Lima Exhibit "B," p. 23.)

* * *

Corrected Rate Study.

[20*] For the convenience of the court we have prepared two exhibits designated as Lima Exhibit A and Lima Exhibit B (see pp. 21, 23) and we believe that a careful analysis of these exhibits will convince the court of the soundness of the commission's position in this case.

Analysis of Lima Exhibit A (p. 21).

This exhibit shows the differences in expenses as claimed by the company and as allowed by the commission with the corrections of the table on page 35 of the company's reply brief. It sets up the average annual expenses for distribution of gas in the city of Lima for the period from 1928 to 1931, inclusive, showing the difference between the amounts claimed by the company and those allowed by the commission. These differences have all been discussed heretofore in this brief and the table contained in this exhibit was the basis upon which the discussion of differences in operating expenses was predicated. This exhibit also contains a reconciliation with the table shown on page 35 of the company's reply brief. (For table, see p. 186A, *infra*).

[22*]

Analysis of Lima Exhibit B (p. 23).

Exhibit B shows the gross revenues from gas service in Lima which will be earned under the rates fixed by the commission, as shown in reply brief prepared by the company at page 21 thereof. This exhibit shows the gross revenues of the company for gas service in Lima for each

Lima Exhibit A.

WEST OHIO GAS COMPANY, LIMA, OHIO—SUPREME COURT OF OHIO, NO. 24104.

TABLE OF DIFFERENCES IN EXPENSES BETWEEN COMPANY AND COMMISSION CORRECTING THE TABLE ON PAGE 35 OF THE COMPANY'S REPLY BRIEF

		Average Annual Expenses for City of Lima for Years 1928-1931, Both Inclusive		
Operating Expenses:		*Company*	*Commission*	*Difference*
1.	Gas produced and purchased	$150,361.75	$143,578.00	$6,783.75—
2.	Distribution expense	40,622.11	34,428.00	6,194.11—
3.	Commercial expense	20,804.25	19,719.00	1,085.25—
4.	New business expense	12,110.20	5,000.00	7,110.20—
5.	General and miscellaneous expense	47,557.80	39,235.00	8,322.80—
6.	Indirect charges to construction—Cr.	(3,825.51)	(3,804.00)	21.51+
7.	Retirement allowance	52,539.40	24,518.00	28,021.40—
8.	Amortization of pipe line	22,935.97	.....	22,935.97—
9.	Real and personal property taxes	22,767.32	22,797.25	29.93+
10.	State of Ohio—Excise tax	7,107.79	7,114.25	6.46+
11.	Tax of Public Utilities Commission of Ohio	277.82	278.25	.43+
12.	Federal income tax	8,494.25	8,504.00	9.75+
13.	Uncollectible accounts	2,441.28	2,445.75	4.47+
14.	Total	$384,194.43	$303,813.50	$80,380.93—

( ) Indicates red figures.

Reconciliation With Table Shown on Page 35 of Company's Reply Brief:				
15.	Totals shown in company's reply brief	$384,194.43	$313,333.00	$71,699.01—
16.	Errors in footings shown in brief	.....	732.58—	105.00+
17.	Reduction in gas produced and purchased as explained in note on Exhibit "B"	.....	2,996.92—	2,996.92—
18.	Rate case expense disallowed by commission but included in table on page 35 in error	.....	5,790.00—	5,790.00—
19.	Corrected totals shown on line 14 above	$384,194.43	$303,813.50	$80,380.93—

Lima Exhibit B.

WEST OHIO GAS COMPANY, LIMA, OHIO—SUPREME COURT OF OHIO NO. 24104.

CORRECTED RATE STUDY.

		Year 1928	*Year 1929*	*Year 1930*	*Year 1931*	*Average 4 Years*
1.	M c. f. of gas sold in Lima	395,423.3	399,309.5	380,297.5	354,148.8	382,294.8*
	Revenues:					
2.	Gross revenues from gas service in Lima under commission's rates	$432,097	$434,876	$412,995	$384,931	$416,225*
	Expenses:					
3.	Cost of gas sold	145,041	153,495	146,262	129,512	143,578*
4.	Distribution expense	36,265	35,151	31,643	34,651	34,428
5.	Commercial expense	20,567	19,363	19,240	19,707	19,719
6.	New business expense	5,000	5,000	5,000	5,000	5,000
7.	General and miscellaneous expense	37,854	45,974	40,237	32,877	39,235
8.	Indirect charges to construction—Cr.	(1,827)	(2,588)	(8,400)	(2,401)	(3,804)
9.	Depreciation	24,518	24,518	24,518	24,518	24,518
10.	Real and personal property taxes	23,353	24,889	23,121	19,826	22,797
11.	Ohio excise tax	7,034	7,382	7,259	6,782	7,114
12.	P. U. C. O. tax	286	282	265	280	278
13.	Income tax	10,144	8,867	6,878	8,127	8,504
14.	Uncollectible accounts	2,768	2,753	2,228	2,034	2,446
15.	Total expenses	$311,003	$325,086	$298,251	$280,913	$303,813
16.	Net income	$121,094	$109,790	$114,744	$104,018	$112,412
	Rate of Return:					
17.	Based upon commission's valuation of $1,901,696 as of March 31, 1928	6.37%	5.77%	6.03%	5.47%	5.91%

NOTE:

* The operating statistics shown in Exhibit "A" of the commission's opinion erroneously included sales to Delphos and other items, as explained on page 21 of the company's reply brief, where corrections were made and explained as they pertained to reductions in the M c. f. of gas sold and the revenues derived therefrom. By the same reasoning, a reduction in the M c. f. of gas sold would also result in a reduction in the cost of gas sold, but no correction of this item was made in the company's reply brief. However, in preparing the above exhibit, all figures on lines 1, 2 and 3 have been corrected to eliminate all factors not pertaining to Lima, not only in respect to M c. f. of gas sold and revenues, but also in respect to cost of gas sold.

( ) Indicates red figures.

of the years 1928, 1929, 1930 and 1931. It also shows the average for the four year period. The exhibit then sets forth the expenses as set forth in the commission's reply at page 18, corrected. These expenses are shown in detail together with a total for each of the years 1928, 1929, 1930 and 1931, and with the average for the four year period. The study then shows the net income for each of the four years together with the rate of return earned in each year and the average. From this study it will be observed that upon the basis of the gross revenues as shown by the company and upon the basis of the expenses as allowed by the commission, corrected as to all mathematical and other errors, and upon the basis of the commission's valuation of $1,901,696 the company earned for the year 1928 a return of 6.37%; for the year 1929 a return of 5.77%; for the year 1930 a return of 6.03%; a return for the year 1931 of 5.47% and an average for the four year period of 5.91%. (For table, see p. 187A, *supra*).

V.

EXCERPTS FROM SUPPLEMENTAL REPLY BRIEF FILED ON BEHALF OF THE WEST OHIO GAS COMPANY AFTER THE REARGUMENT OF THE CAUSE.

[53*]

The Changes in the Operating Expenses to Be Taken Into Account, Which Are Urged by Counsel for the Commission in Order to Increase the Apparent Return from Lima Service to the 6% Per Annum Found Necessary in the Commission Order, Are Not Supported by the Evidence or Warranted Under the Law.

In their supplemental brief, counsel assert that if the rates fixed by the commission had been in effect and if

operating costs had been only those taken into account by the commission, the earnings of the company would have averaged 5.91% per annum for the years 1928, 1929, 1930 and 1931 instead of the 5.45% shown on page 26 of our reply brief. They accomplish this alleged increase in earnings by means of an erroneous claim for a further reduction at the rate of $2,996.92 per year in the item of "cost of gas produced and purchased," and by now denying that the rate case expense incurred by the company in the proceedings before the commission should be taken into account. These are the two items shown in lines 17 and 18 on their "Lima Exhibit A" appearing on page 21 of their supplemental brief, and account for the total differences between the net income and percent return shown on the sheet following page 26 of our reply brief, and the net [54*] income and percent return shown in the table marked "Lima Exhibit B" appearing on page 23 of their supplemental brief.* In other words, counsel now claim that instead of approximately $71,500 a year of actual operating costs being ignored there should be a disregarding of such costs in an average amount of over $80,000 a year.

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*NOTE: In line 16 of the table appearing on page 21 of counsel's supplemental brief, they call attention to errors of $732.58 and $105.00, occurring in footings shown on page 35 of our reply brief. The corrections should be made. The table on page 35 was originally set up and totalled before the corrections in the commission calculations were submitted to Mr. Herbert. Revision made in conference changed slightly certain of the commission average expense items. In the table on page 35, the corrections were made in the specific accounts, but through oversight the accounts were not re-totalled. While the discrepancies are small and the erroneous totals are nowhere used as the basis for any calculations, we thank counsel for calling the error to the attention of the court and of ourselves.

The short answer to all this is that the attempted arbitrary reductions in actual costs of operation are entirely illegal and therefore it is immaterial whether the sum which it is claimed should be disregarded annually, is $71,500 or $80,000. We think it important, however, to show the court briefly the untenability of the latest device employed by counsel to create the illusion of annual earnings of around 6% under the commission rates. Discussion of the items will serve, also, to illustrate again how shallow has been counsel's consideration of the applicable legal principles and how ill-advised they have been by the commission's so-called "experts" as to the figures which they are trying to change.

[55*] A.

COUNSEL ARE IN ERROR IN CLAIMING THAT THE OPERATING EXPENSES CONSIDERED BY THE COMMISSION INCLUDED COST OF GAS USED TO SUPPLY DELPHOS AND THE NORTH TOWNS.

Counsel's reason for further reducing the item of "Cost of Gas Produced and Purchased" is, they inform the court on page 9 and again in the note on page 23 of their supplemental brief, due to the fact that the operating expenses used by the commission in determining net return included the cost of gas used to supply Delphos and the north towns. In this assertion counsel are in error. The cost of gas sold in Lima as developed by the commission did *not* include the cost of the gas sent to Delphos and the towns north. The costs taken into account by the commission were developed from Company Exhibit 104. (See Deft. Bf., p. 18). The figures so used from Company Exhibit 104, do not include, but exclude, the cost of gas for sale in Delphos and the north towns, as is plainly shown on page 5 (note 2) and page 6 (note 2) of that exhibit.

On those pages, the item designated "Cost of Gas Sent Out" is adjusted and reduced because of the fact that gas was sold to Delphos and in the north towns in 1930 and 1931. It is this reduced figure that correctly appears on page 1 of Company Exhibit 104 as the "Cost of Gas Produced and Purchased" for the *Lima* district. It is this summary on page 1 that the commission "expert" used as [56*] the basis for his original calculations as to operating expense. (See Deft. Bf., p. 18).

The error of counsel (or of their "expert" advisor from the commission staff) grows out of a failure to read what we pointed out on pages 19 and 20 of our reply brief. We showed there that the correction necessary in the commission's calculations, was limited to a correction of the estimated *revenues* from *Lima* service under the commission rates. We there stated the fact that this correction was required because the estimate of such *revenues* was based on Company Exhibit 105, which was introduced to show that "even if the Lima ordinance rate was applied to *all* gas manufactured at the Lima plant, including that sold in Lima for house heating and that sold to or in municipalities outside of the Lima district, still the total *revenues* would not be sufficient to *pay operating expenses applicable to Lima district service alone.*" Those operating expenses, as Company Exhibit 105 shows, are the operating expenses shown on page 1 of Company Exhibit 104.

APPENDIX B.

Discussion of Certain Misstatements and Inaccuracies in the Alleged Statement of Facts in the Opinion of the State Court.

1. On page 304 of its opinion (R. 17), in the first paragraph of the alleged history of the case, the state court, copying the purported statement of facts from the brief of counsel for the commission, states:

> "In 1923 the two properties were combined, the natural gas company securing permission from the Public Utilities Commission to furnish the city with a mixed fuel gas. *By this method* the physical plant of the gas light company was added into the system of the natural gas company and *the loss by obsolescence was avoided.* These two combined systems together with replacements and additions constituted the gas properties now being operated in the city of Lima by the plaintiff in error."

We think this statement necessarily has the effect of producing the impression in the mind of anyone unfamiliar with the situation, that there are now in use in Lima duplicate gas systems, that these were combined without regard to the need for or use of them, and that the properties were so consolidated in order to avoid the retirement of unnecessary facilities.

Such impression would be an incorrect one. It would be contrary to what the record establishes. The evidence in the record in reference to the combination of the two operating companies in Lima is found on pages 146-56 of the printed record. The evidence was first developed by counsel for the city in cross-examination of witnesses for the company. Counsel for the city made certain inquiry

about the location of the mains of the Lima Gas Light Company and those of the Lima Natural Gas Company in certain of the same streets. On pages 152-3 of the record the following is shown:

"Commissioner Maullar: Are you claiming a duplication in the present set-up, Mr. Landis?

"Mr. Landis: *I don't know yet,* Your Honor; *we will find out.*

"Q. What became of these mains and distribution system of The Lima Gas Light Company's pipes when the two companies were merged; that is, when they combined the service? A. Some of them were abandoned; in some cases some of the lines were taken up and the rest of the property, or the rest of the lines were tied in with the natural gas distribution system.

"Q. How much of these pipes was taken up? A. Well, I could not answer that offhand.

"Q. You can find out? A. Yes.

"Q. You say some of them were abandoned? A. Yes, sir.

"Q. What do you mean 'abandoned'? A. Well, it was under permanent paving; besides, *the lines were not necessary and we simply left them there because it would be cheaper to leave them* under the pavement *than to remove them.*

"Q. And you say *some of the others* were tied into the system of The Lima Natural Gas Company? A. Yes; in order that a more equal distribution of gas might be given to the customers that would bring about the excellent service referred to this morning.

"Q. What do you mean 'Equal distribution'? A. Well, the more pipe lines you have and the larger and the greater area you touch you get a more equal distribution of your gas to your customers.

"Q. In other words, if you have a small pipe in this particular location and a larger pipe adja-

cent to it, the one with the larger pipe would get better distribution than the one that had a smaller pipe; is that what you mean? A. Yes, and in addition to what you say, we found a lot of customers that were on artificial gas lines and there wasn't a natural gas service running into the premises, and by tying the lines in we were permitted to use the gas served at that time through the old artificial system, meaning that if the artificial service into that particular place or those particular places had been abandoned, it would have been necessary to run a line from the present system in, and in many instances that was impossible, owing to the fact that the service line from the main to the curb was under permanent paving; and if you already have an artificial service going into that building from the artificial line, by tying that artificial line to the natural gas line we were able to reach a great number of customers that had been using artificial gas entirely and not natural gas at all."

On redirect examination the facts on this subject were further developed. The testimony here shows, *inter alia,* (R. 155-6):

"Q. I will ask you whether any part of these lines was included in the valuation which Mr. Heyser submitted here except those which are used in the natural gas business? A. Only those that are used and useful.

"Q. And the other two are not at all included in the amounts of pipe, are they? A. They are not.

"Q. Now, for instance, on Market street where you tied the lines, the artificial lines on one side of the street, and used it as a supply line, was that economical to do that rather than to increase the size of your natural gas line? A. We considered it a very wise thing to do and very economical because we eliminated a lot of labor cost and additional material cost by tying the two lines together.

"Q. And aside from getting better service as you have explained in answer to Mr. Landis, the fact is that the town has grown westward a mile or two in the last fifteen years, hasn't it? A. It has.

"Q. And without the use of those lines you probably would have had to increase your main natural gas line? A. And in addition to that we perhaps would have had to construct a gas holder at some advantageous point in the western part of the city.

"Q. Besides the expense and inconvenience to the public of digging up the pavement and putting in a new line, etc.? A. That is true.

• • •

"Q. I think you said, but I will ask you again to be sure, whether or not in this valuation which Mr. Heyser prepared and which has been submitted here, there is included a single foot of pipe that was formerly a part of the artificial or Lima Gas Light system that is not used or useful now in the natural gas business or the mixed gas business as it is now. A. Absolutely none."

2. On page 305 of its opinion, the state court has set forth, as facts in the case, allegations made by counsel for the commission in their brief to the effect that the plant and property used and useful in rendering service in Lima are greatly in excess of requirements, and that the commission did not consider this alleged fact in determining its valuation of the property. (R. 18). For example, the court states that the plant "*admittedly* has a capacity of practically two or three times the requirements of Lima;" and that "the commission did not reduce the valuation of this plant."

These assertions are in direct conflict with the evidence. Claims of over-capacity were strenuously advanced before the valuation was made. The commission had the entire

subject fully before it when it made the valuation. It made the deduction for over-capacity recommended by its own engineers. (R. 301).

We direct the court's attention to a bit of the city's own evidence (R. 427):

> "Q. (By Mr. Light) And the artificial plant is large enough to supply *three times* the needs of Lima, either independent of the other?
>
> [Objections overruled.]
>
> "The Witness (Mr. Allensworth): *No, sir, I do not think it is quite that large. I think it is one-third too large* to meet the requirements of Lima."

And on this same subject the commission's own engineers reported (R. 623):

> "At the present time The West Ohio Gas Co. is operating its manufacturing plant 11 to 12 hours per day. If smaller equipment were installed the operation would of necessity be over a longer operating period, thereby entailing an increased yearly operating labor expense of from $3,000.00 to $4,000.00. It is our opinion that this saving in labor necessary for operation would be greater than the savings on the decreased investment made possible with smaller generating equipment."

Even so, they reduced the plant valuation by 15% because of alleged over-capacity. (R. 301).

During the hearings the chairman of the commission propounded special inquiries upon this subject (R. 291-2, 295), which were answered by witnesses for the city and the company. (R. 555-66, 617-9). There is additional evidence on the subject on the following pages of the printed record. (R. 201-6, 237-8, 248-9, 265, 276-9, 286-7, 288-90, 401, 426-8, 515, 525, 170-1, 620-1).

All these facts were specifically set forth in the briefs before the state court.

3. On page 306 of its opinion the court, again adopting the unsupported assertions of counsel for the commission, states as a fact that the total production cost of the mixed gas is 32½ cents per thousand cubic feet according to the company's figures. The record as to the holder cost of the mixed gas, *i. e.*, the cost of the natural gas and the bare manufacturing cost of the water gas (exclusive of taxes and return on investment) is shown in the record to be as follows (R. 334):

> "Commissioner Bricker: I think this is in the record some place, but what is approximately the cost per thousand cubic feet of producing your water gas?
>
> "The Witness: Holder cost for gas in the gas holder ready for distribution?
>
> "Commissioner Bricker: Yes.
>
> "The Witness: 1931, the holder cost was 37.79 cents.
>
> "Mr. Light: That is the mixed or the blue gas?
>
> "The Witness: That is the mixed gas in the holder ready to go into the distribution system. The year 1930 was 35.56 cents. Year 1929, 35.51 cents. The year 1928, 35.37. And the year 1927, 38.53 cents per thousand."

This fact was specifically called to the state court's attention in our reply brief.

4. On the same page of its opinion the state court, again adopting counsel's assertion, states that the company has 93 cents for distribution and profit. That this assertion is a misstatement of fact was pointed out to the state court and the adoption of the statement by that court is but another clear indication that the court did not examine the record. We shall repeat here what we submitted to the state court on this point:

The misstatement by counsel (as to distribution cost and profit) was probably predicated upon a blind acceptance of an unwarranted assertion in the commission order. The commission states on page 2 of its opinion (R. 89-90), that the cost of the mixed gas is approximately 32 cents per thousand cubic feet and that the cost of storage and leakage during distribution is perhaps 3½ cents per thousand cubic feet. It then asserts there that the average cost to the consumer is $1.29 per thousand cubic feet, and that the difference of 93 cents per thousand cubic feet is the cost of "*distribution* alone." It then further asserts that "this seems an unjustified charge *for the service of distribution.*"

The statement by the commission that 93 cents per thousand cubic feet is the cost of distribution, is erroneous and inexcusable. We have already shown the court that the allegation that 32 cents per thousand cubic feet is the cost in the holder is incorrect as shown by the evidence. Likewise, the evidence does not support the claim that 3½ cents per thousand cubic feet covers the cost of storage of gas and leakage during distribution. The rate is in fact considerably higher than this. Furthermore, as the commission must have known, not only from the general testimony, but from Company Exhibit 104 (R. 529-48) and the annual reports which it insisted on using, the inaccurate 32-cent figure it used did not include taxes on the manufacturing plant or transmission lines or return on the investment therein, which items represent a very large portion of the 93-cent figure referred to. In addition, there is no justification for considering that all of the administrative expense of the company is attributable to the service of distribution. Such expense is as necessary in connection with the procuring and manufacturing of the gas as it is in connection with the distribution thereof.

The statement of the commission is wholly unfounded. It is untrue and serves but one purpose,—that is, to create a false impression to the prejudice of the company.

We also ask the court to keep in mind the fallacy of attempting to compare blindly on a M. C. F. (thousand cubic feet) basis the cost of rendering gas service. This may be readily illustrated.

Consider any community in which gas utility service is being rendered. The costs for reading meters and for preparing and sending out bills are, generally speaking, the same for each customer served within that community. That is, in a given community it costs (except in isolated cases where some unusual condition exists) about the same amount to read each meter, and about the same amount to prepare and send out each bill. These costs are not affected by the volume of the product used. Now consider two customers in that community,—A using one thousand cubic feet of gas per month, and B using five thousand cubic feet in the same period. The expense of reading the two meters and sending out the bills is identical in each case; yet, the cost per M. C. F. for these services is five times as great in the case of A as in the case of B. Clearly it would be a most specious argument to urge that although the expense of such service to B was reasonable, the expense of the service to A was five times too high. The fact that such differential on an M. C. F. basis exists isn't the slightest indication that the charge to A is unreasonable. As a matter of fact if the expense in the case of B is reasonable, it necessarily follows that the expense as applicable to A's service is reasonable. The services are performed at the same cost. The argument of counsel for the commission on this point is exactly the specious one just pointed out. If their contention were adopted it would be necessary to hold in respect to the illustration just given that the ex-

pense in A's case is unjustifiable, because on an M. C. F. basis it is several times greater than in the case of B.

5. On page 303 of its opinion (R. 16), the state court makes the following assertion:

> "The claim is made that residents of the city of Lima pay more for their gas per thousand cubic feet than any other city of Ohio. This is denied. Comparisons are made by way of proof and disproof. These comparisons add volume to the briefs, but are of little, if any, aid to the court."

The claim was a query during cross-examination. We quite agree that the claim is of no aid to the court. However, since the court saw fit to refer to the subject, it should be pointed out that the testimony of the witness shows the claim to be incorrect. (R. 221-4, 419-24). The *"volume"* on the subject in the briefs consists wholly of two sentences, totalling seven lines, in the initial brief of counsel for the commission; of two sentences, totalling sixteen lines, in the supplemental brief filed for the commission; and of a single paragraph in our supplemental reply brief calling attention to the record on this subject. One of the two sentences contained in the initial brief for the commission is repeated in the court's alleged statement of facts, pages 306-7. It is that

> "The tariffs on file at the commission show that natural gas out of this same transmission line is sold by the Ohio Fuel Gas Company at Ada, Ohio, within twenty miles of Lima, at 65c per thousand."

The statement is inaccurate. Obviously the tariffs had not been examined. Those tariffs applicable to Ada provide a rate of $1.50 for the first thousand cubic feet and a minimum charge of $1.50 per month. Additional gas is sold at 63 cents gross per thousand cubic feet. And if the state court or counsel desired to discuss what the commission's files show as to gas rates in the vicinity of Lima

each ought, in fairness, to have stated also that at Van Wert, about twenty-nine miles from Lima, artificial gas is sold at a flat rate of $2.50 per thousand cubic feet, with a monthly minimum of 50 cents.

6. On page 306 of its opinion, the court refers to the fact that there is evidence that the heating content of the gas supplied by the company does not average over 475 British thermal units per cubic foot, instead of 550 British thermal units. The record shows that the company keeps a constant check as to heating content and that this is recorded by an automatic Thomas recording calorimeter, which is inspected and tested every few months. If this court considers the issue of any importance, as far as this case is concerned, we respectfully ask it to examine the entire record as to the quality and character of service and to keep in mind that not one single complaint by a customer as to the quality of service was shown in evidence. The complete record touching upon this general subject is, we believe, found in the following pages of the printed record: 130-1, 143-5, 156, 188-98, 254-5, 267, 279-88, 293, 568-72, and in Company's Exhibits A and H, which were transmitted to this court as original exhibits and are two of the monthly charts, automatically recorded by the Thomas calorimeter.

7. On pages 304-5 of its opinion the court, following counsel's unsupported statements, says that

> "In December, 1924, on the occasion of the transfer of the assets to the West Ohio Gas Company, the commission authorized the issuance of $3,376,000 of *bonds* and *preferred stock* securities." (R. 17-8).

We presume this statement was probably intended to suggest that the cost of capital was due to the issuance of too great a proportion of preferred securities. It is inaccurate. What the record referred to does show, is that

at the time of the organization of the West Ohio Gas Company *securities* of a total face value of $3,376,000.00 were authorized by the commission. Of these securities there were $1,000,000.00 face value of bonds and $750,000.00 par value of preferred stock. The remainder was common stock. (R. 553). The fact is that the bonds and preferred stock, which were all the preferred securities issued by the company prior to 1932, were less in face amount than the low value of $1,901,696.26 found by the commission as the value of the Lima property alone.

8. On page 305 the state court asserts, as counsel did, that this "order" (the order fixing the purchase price of the property acquired by the West Ohio Gas Company) "was based *upon previous appraisals* and not related to purchase price." (R. 18). The purpose of this statement is not clear unless it is to create the impression of overcapitalization. Regardless of its aim, it is both untrue and directly in conflict with the record. (R. 406, 396-7, 401-2). This fact was pointed out to the court in the briefs.

9. On the same page, the court adopts counsel's statement that "Eight per cent. preferred stock, an issue of $750,000, was sold to *another* Insull company at 87½." The stock was in fact 7% preferred stock. The statement that the stock was sold "to *another* Insull company" is incorrect. It seems intended to create the impression of a series of transactions between related companies. Such of the stock as could not then be marketed was bought by the Midland Utilities Company, the owner of the common stock. The entire facts as to the issuance and disposal of the preferred stock securities are set out in the record, and were called to the state court's attention. (R. 513-4).

APPENDIX C.

Applicable Statutory Provisions.

General Code of Ohio, Section 499-14:

The commission shall have power to establish a system of accounts to be kept by the public utilities or railroads (including municipally owned or operated utilities), or to classify said public utilities or railroads and to establish a system of accounts for each class, and to prescribe the manner in which such accounts shall be kept; * * * Where the commission has prescribed the forms of accounts, records or memoranda to be kept by any public utility or railroad for any of its business, it shall thereafter be unlawful for such public utility or railroad to keep any accounts, records or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission. The commission shall at all times have access to all accounts kept by such utilities or railroads and may designate any of its officers or employes to inspect and examine any and all such accounts. It shall be the duty of the auditor or other chief accounting officer of any such utility to keep such accounts and make the reports provided for in section 614-48 of the General Code. Whoever being such auditor, or chief accounting officer, violates or fails to comply with the provisions of this section shall upon conviction thereof be subject to the penalties provided for in section 614-65 of the General Code. It shall be the duty of the attorney general to enforce the provisions of this section upon request of the commission, by mandamus or other appropriate proceedings.

General Code of Ohio, Section 544:

A final order made by the commission shall be reversed, vacated or modified by the Supreme Court, on a petition in error, if upon consideration of the record such court is of the opinion that such order was unlawful and unreasonable.

General Code of Ohio, Section 545:

The proceeding to obtain such reversal, vacation or modification shall be by petition in error, filed in the Supreme Court, by any party to the proceeding before the commission, against the Public Utilities Commission of Ohio, setting forth the errors complained of. Thereupon unless the same is duly waived a summons shall issue and be served, as in other cases, upon the chairman of the commission, or, in the event of his absence, upon any member of the commission, or by leaving a copy at the office of the commission at the city of Columbus. The court may permit any interested party to intervene by cross-petition in error.

General Code of Ohio, Section 546:

Upon service or waiver of the summons in error the commission shall forthwith transmit to the clerk of the Supreme Court a transcript of the journal entries, original papers or transcripts thereof and a certified transcript of all evidence adduced upon the hearing before the commission in the proceeding complained of, which shall be filed in said court.

General Code of Ohio, Section 547:

No proceeding to reverse, vacate or modify a final order of the commission shall be deemed commenced unless the petition therefor is filed within sixty days after the entry

of the final order complained of upon the journal of the commission.

General Code of Ohio, Section 549:

No court other than the Supreme Court shall have power to review, suspend or delay any order made by the commission, or enjoin, restrain or interfere with the commission or any member thereof in the performance of official duties. Nor shall the writ of mandamus be issued against the commission or any member thereof by any court other than the Supreme Court.

General Code of Ohio, Section 614-44:

Any municipal corporation in which any public utility is established may, by ordinance, at any time within one year before the expiration of any contract entered into under the provisions of Secs. 3644, 3982, and 3983 of the General Code between the municipality and such public utility with respect to the rate, price, charge, toll or rental to be made, charged, demanded, collected or exacted, for any commodity, utility or service by such public utility, or at any other time authorized by law proceed to fix the price, rate, charge, toll or rental that such public utility may charge, demand, exact or collect therefor for an ensuing period, as provided in Secs. 3644, 3982 and 3983 of the General Code. Thereupon the commission, upon complaint in writing, of such public utilities or upon complaint of one per centum of the electors of such municipal corporation, which complaints shall be filed within sixty days after the passage of such ordinance, shall give thirty days' notice of the filing and pendency of such complaint to the public utility and the mayor of such municipality of the time and place of the hearing thereof, and which

shall plainly state the matters and things complained of. • • • Upon such filing, the commission shall forthwith give notice of the filing and pendency of such complaint to the mayor of such municipality and fix a time and place for the hearing thereof. The commission shall, at such time and place, proceed to hear such complaint, and may adjourn the hearing thereof from day to day. The filing of a complaint by a public utility, as herein provided, shall be taken and held to be the consent of such public utility to continue to furnish its product or service, and devote its property engaged therein to such public use during the term so fixed by ordinance or by the provisions of this act. Parties thereto shall be entitled to be heard, represented by counsel, and to have process to force the attendance of witnesses.

General Code of Ohio, Section 614-46:

If the commission, after such hearing, shall be of the opinion that the rate, price, charge, toll or rental, so fixed by ordinance is or will be unjust or unreasonable, or insufficient to yield reasonable compensation for the service, the commission shall, with due regard to the value of all the property of the public utility, actually used and useful for the convenience of the public, excluding therefrom the value of any franchise or right to own, operate or enjoy the same in excess of the amount (exclusive of any tax or annual charge) actually paid to any political subdivision of the state or county as a consideration for the grant of such franchise or right; and exclusive of any value added thereto by reason of a monopoly or merger and to the necessity of making reservations from the income for surplus, depreciation and contingencies, and such other matters as may be proper, according to the facts in each case, fix and determine the just and reasonable rate, price,

charge, toll or rental to be charged, demanded, exacted or collected by such public utility, during the period so fixed by ordinance which shall not be less than two years, and order the same substituted for the rate, price, charge, toll or rental so fixed by ordinance or the commission may find and declare that the rate, price, charge, toll or rental, so fixed by ordinance is just and reasonable, and ratify and confirm the same.

No such rate, price, charge, toll or rental so determined by the commission shall become effective or valid until after the commission shall have ascertained and determined the valuation upon which such price, charge, toll or rental is based as provided in this act. And such valuation so determined shall be, at all times, open to public inspection. Thereupon the commission shall make inquiry and investigation with respect to the ability of such public utility to furnish its product during such period, if it be found that it is able so to do, the commission shall order the public utility in question to continue to furnish the same for the period and at the rate, price, charge, toll or rental so fixed and determined, and such public utility shall continue to furnish its product as provided in such order. If the commission, after the hearing provided for in Sections 614-44 and 614-46 of the General Code shall be of the opinion that any provisions of the ordinance appealed from or complained of other than the rate, price, charge, toll or rental fixed thereby are or will be unjust or unreasonable or that the form and structure of the rate, price, charge, toll or rental fixed thereby may be unfair or unreasonable, or may have the effect of causing any rate, price, charge, toll or rental to be fixed by the commission to become unfair or unreasonable, the commission shall in its order strike out such unjust or unreasonable provisions, conditions, form and structure of said ordinance and shall substi-

tute therefor, if it deem it necessary such provisions and conditions as it may consider fair and reasonable, and make such changes in the form and structure of the rate, price, charge, toll or rental fixed in such ordinance as it may consider fair and reasonable.

General Code of Ohio, Section 3982:

The council of a municipality in which electric lighting companies, natural or artificial gas companies, gas light or coke companies, or companies for supplying water for public or private consumption, are established, or into which their wires, mains or pipes are conducted, may regulate from time to time the price which such companies may charge for electric light, or for gas for lighting or fuel purposes, or for water for public or private consumption, furnished by such companies to the citizens, public grounds, and buildings, streets, lanes, alleys, avenues, wharves, and landing places, or for fire protection. Such companies shall in no event charge more for electric light, natural or artificial gas, or water, furnished to such corporation or individuals, than the price specified by ordinance of council. The council may regulate and fix the price which such companies shall charge for the rent of their meters, and such ordinance may provide that such price shall include the use of meters to be furnished by such companies, and in such case meters shall be furnished and kept in repair by such companies and no separate charge shall be made, either directly or indirectly, for the use or repair of them.

General Code of Ohio, Section 3983:

If council fixes the price at which it shall require a company to furnish electricity or either natural or artificial gas to the citizens, or public buildings or for the purpose of lighting the streets, alleys, avenues, wharves, landing

places, public grounds or other places or for other purposes, for a period not exceeding ten years, and the company or person so to furnish such electricity or gas assents thereto, by written acceptance, filed in the office of the auditor or clerk of the corporation, the council shall not require such company to furnish electricity or either natural or artificial gas, as the case may be, at a less price during the period of time agreed on, not exceeding such ten years.

General Code of Ohio, Section 5483:

• • • In the month of October, annually, the auditor of state shall charge, for collection from each electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating, cooling and water transportation company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported by the commission as the gross receipts of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking one and thirty-five one-hundredths per cent of all such gross receipts, which tax shall not be less than ten dollars in any case.

General Code of Ohio, Section 2294-4:

• • • For the purpose of providing funds for poor relief and of the carrying out of the other purposes and provisions of this act, a sum in the nature of an excise tax for the privilege of carrying on its intra-state business in the amount of one per centum of the gross receipts of each electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating, cooling, water transportation, and telegraph company, on its intra-state business from and after the effective date of this act, as covered by the annual reports required by law to be filed

by all such companies as are herein before mentioned in the years 1932, 1933, 1934, 1935, 1936, 1937, is hereby levied and imposed upon each such company in each of said years, such tax to terminate five years after the final date covered by the annual report filed by each of such companies in the year 1932; • • • The sum so levied to be in addition to the taxes provided for in Sections 5468, 5483, 5485 and 5488 of the General Code, and to be collected on the dates and in the manner provided in said sections.

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IN THE

Supreme Court of the United States

October Term, 1934.

No. 212.

WEST OHIO GAS COMPANY,

Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO,

Appellee.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT OF THE CASE.

On March 19, 1928, the city of Lima, Ohio, pursuant to the provisions of Section 614-44, 3982 and 3983 of the General Code of Ohio, passed an ordinance fixing the price which the West Ohio Gas Company should be permitted to charge for gas furnished to the consumers within the city during a period of five years from the effective date of the ordinance. The rates so fixed by the ordinance were as follows (R., 88):

90¢ for the first 1000 cubic feet,
80¢ per M c. f. for the next 3000 cubic feet,
75¢ per M c. f. for the next 6000 cubic feet,
55¢ per M c. f. for all over 10,000 cubic feet.

The company thereafter in accordance with the provisions of the Ohio Statutes filed with the Public Utilities Commission of Ohio its appeal from said ordinance and elected, pending the determination of the appeal, to charge the schedule of rates in effect prior to the passage of the ordinance under the provisions of Sections 614-44, 614-45 and 614-46 of the General Code of Ohio. These rates were as follows (R., 88):

$1.25 for the first 400 cubic feet or less per month,
$1.05 per M c. f. for the next 9600 cubic feet,
$1.00 per M c. f. for the next 25,000 cubic feet,
75¢ per M c. f. for all over 35,000 cubic feet.

On July 12, 1928, the commission commenced the hearing on the valuation of the company's property for the purpose of determining its fair value for rate-making purposes, and on January 27, 1932, the commission entered its order fixing the value of the property as of March 31, 1928, the date certain, at $1,901,696.26. (R., 82.)

No appeal was taken from the value so ascertained by the commission and its finding thereupon became final.

The record clearly discloses, however, that the valuation fixed by the commission represents a property far in excess of the needs of the city of Lima (R., 201, 204, 205, 206, 248, 249, 265, 292, 301, 427, 428), and it will be recognized that the valuation made as of March 31, 1928, on the basis of prices then existing, does not represent the real value of the property during the succeeding five years of the ordinance period involved. (R., 478, 511, 512.)

Following the determination by the commission of the value of the company's property used and useful in furnishing gas to consumers in Lima, the commission on

June 7, 1932, began the taking of testimony relating to the operating expenses and revenues of the company for the purpose of ascertaining the return earned by the company. In addition to the testimony introduced by the company the commission, in accordance with the provisions of the Ohio Statutes (G. C. 499-15), entered an order putting in evidence the annual reports of the company filed with the commission for the calendar years 1928, 1929, 1930 and 1931. (G. C. 614-48.)

Thereafter, on March 10, 1933, the commission entered its final rate order in the proceeding supported by its written opinion issued the same day. (R., 85-99).

On May 19, 1933, the commission entered a nunc pro tunc order in the case for the purpose of correcting certain mathematical errors in its original findings. This order being filed in the Supreme Court of Ohio on May 27, 1933. (R., 118-124.) This finding of the commission held that the ordinance rates adopted by the city council of Lima on March 19, 1928, were insufficient to yield a fair return to the company upon the basis of the commission's valuation of the company's property but that the rates being collected by the company were excessive and fixed, pursuant to the provisions of the Ohio Statutes (G. C. 614-46), the following schedule of rates to be charged in Lima during the ordinance period as fair and reasonable. (Com. order, p. 1, R., 86.)

400 cubic feet or less used per month $1.00,

Next 9600 cubic feet or less used per month 95¢ per M c. f.

Over 10,000 cubic feet used per month 75¢ per M c. f.

Penalty for non-payment of bill within 10 days after receipt of bill .05¢ per M c. f.

It will be observed that the foregoing schedule of rates is somewhat less than the rates being collected by the company under bond but considerably higher than the rates provided for in the ordinance.

The company prosecuted error proceedings from the commission's order to the Supreme Court of Ohio and that court on May 16, 1934, affirmed the order of the Commission (*West Ohio Gas Company v. Public Utilities Commission of Ohio,* 128 O. S., 301, R., 14-35).

The case is in this court on appeal from the judgment of the Supreme Court of Ohio affirming the order of the Public Utilities Commission of Ohio.

The History of the West Ohio Gas Company.

In order that this court may have a complete picture of the problems involved a brief recitation of certain additional facts is essential.

The West Ohio Gas Company is an Ohio corporation organized in 1924. It now furnishes gas to eleven Ohio communities of which Lima is the largest, having a population of 42,287. Of the eleven communities served with gas by the West Ohio Gas Company many are served with natural gas (R., 141, 226) but Lima is served with a mixed gas, that is a manufactured gas enriched with natural gas. (R., 129.)

Originally the business district of Lima was furnished with artificial gas. Later natural gas service was furnished the residential consumers by a separate company. (R., 206-207.) Subsequently, these two gas companies

(Lima Gas Light Company and The Lima Natural Gas Company) came under the control and management of The United Gas Improvement Company of Philadelphia and still later, about 1920 or 1922, these two companies were acquired by the Midland Utilities Company. (R., 149.) Upon the organization of the West Ohio Gas Company in December, 1924, these companies were transferred to the West Ohio Gas Company, the common stock of which in turn was owned by the Midland Utilities Company. (R., 350-352, 396, 402-403.)

The Lima Gas Light Company which manufactured and sold artificial gas in Lima prior to 1924 and The Lima Natural Gas Company which sold natural gas in Lima prior to 1924 were entirely separate corporations (R., 146, 214-229), and each of these companies owned a separate distributing system. The Lima Gas Light Company owning in addition to the distributing system a plant where it manufactured artificial gas (R., 146) and the Lima Natural Gas Company owned a transmission line some forty-four miles in length through which it secured its supply of natural gas. (R., 229, 239, 245.) In 1923 the properties were combined and authority was obtained permitting the furnishing to Lima consumers of a mixed fuel gas. (R., 231.) It is from these combined properties together with replacements and additions that the city of Lima is now furnished with gas by the West Ohio Gas Company. (R., 215.)

At this point it is perhaps desirable to explain a little more fully the transmission line formerly owned by the Lima Natural Gas Company and which is now a part of

the physical property of the West Ohio Gas Company. This transmission line is approximately forty-four miles in length and extends east of the city of Lima, and is used for the purpose of transporting natural gas to Lima and other communities served by the West Ohio Gas Company. (R., 129.) It connects with a supply of natural gas adequate to provide the city of Lima with natural gas. (R., 198, 409.) This transmission line constituted one of the major items in the valuation of the company's property (R., 126) and has a capacity sufficient to supply a city with a population much greater than that of Lima with natural gas. (R., 427.) The requirements of Lima being somewhat in excess of 1,000,000 cubic feet per day. (R., 261, 371.) The manufacturing plant is also sufficient to supply a much larger demand than exists in Lima (R., 201, 204, 205, 206, 248, 249, 265, 292, 427, 428) for the reason that the manufacturing plant alone has a capacity of some 3,000,000 cubic feet per day (R., 265) so that it is at once apparent that the facilities existing by virtue of the transmission line are sufficient to supply a city much larger than Lima with natural gas and that the manufacturing plant is also sufficient in capacity to supply a city much larger than Lima with manufactured gas. A combination of the two facilities in one company of course creates an even greater overcapacity.

The West Ohio Gas Company was organized in 1924 for the purpose of acquiring the ownership of the two separate companies, The Lima Gas Light Company and Lima Natural Gas Company, which had been operating

in Lima prior to that date as well as for the purpose of acquiring certain additional small gas companies in the same general territory. The common stock of the West Ohio Gas Company is owned by the Midland Utilities Corporation of Chicago (R., 218) and the Midland Utilities Corporation is in turn a part of a larger corporation in the Insull organization. (R., 218.) As a matter of fact, prior to 1924 when the West Ohio Gas Company was organized, the Insull interests had acquired the Lima Natural Gas Company, The Lima Gas Light Company, and several other small gas companies in that immediate territory, and The West Ohio Gas Company was organized for the purpose of acquiring these separate companies and combining them into one organization. (R., 403.) This was in December, 1924. The West Ohio Gas Company then proceeded to issue certain securities against the properties they had acquired. The securities so issued consisting of $1,000,000 in bonds, $750,000 in preferred stock, and $1,626,381 in common stock. (R., 396, 398.) Since the original issue of securities by the company they have issued an additional $300,000 in bonds. (R., 399.) The common stock, with the exception of the qualifying shares, was held by the Midland Utilities Company of Chicago, Mr. Samuel Insull, Jr., being president of that company. The preferred stock was also acquired by the Midland Utilities Company at 87½. (R., 513.) The bonds were sold in the open market. (R., 391.)

During the ordinance period which is here involved the company purchased natural gas from the Ohio Fuel Gas Company under a contract calling for a purchase

price of 55¢ per M c. f. (R., 435.) The natural gas so purchased from the Ohio Fuel Gas Company was mixed in the company's plant located at Lima with artificial gas manufactured therein and the mixed gas thus produced was then distributed to Lima consumers. (R., 129.)

The cost of manufacturing the artificial gas was found by the commission to be 20¢ per M c. f. (Commission opinion, R., 89, testimony Company Witness Pringle, 233-234, 335). The mixed gas so produced contains 35% natural gas and 65% artificial gas (R., 211, 334) so that the total production cost of the mixed gas is approximately 32½¢ per M c. f. However, the commission allowed 36¢ per M c. f. as the cost of producing the mixed gas, adding 3½¢ per M c. f. to cover incidental costs before distribution, and leakage during distribution (Commission opinion, R., 89, 90).

It should be noted that the mixed gas so produced has a B. T. U. content of approximately 550 (R., 144, 254) as compared to a normal B T. U. content of about 1000 in natural gas. In other words, the heating qualities of the mixed gas is only slightly in excess of 50% of the heating content of natural gas. (R., 195, 196.)

There is ample evidence in the record to indicate that the average B. T. U. content of the mixed gas does not exceed 476. (R., 188-198—City Exhibits 9a, b, c, d and e).

We do not believe it can be seriously urged that the cost of producing the mixed gas ready for distribution greatly exceeds the 36¢ per M c. f. allowed by the com-

mission (R., 334-421) and we believe it is equally true that the average cost of gas to the consumer in Lima under the company rates is about $1.29 per M c. f. (Commission opinion, R., 90) which is a higher rate than other communities similarly situated are paying (R., 273).

Twenty years ago natural gas with a B. T. U. content of about 1000 was distributed in Lima by this company's predecessor at a retail price of from 30¢ to 33¢ per M c. f. (R., 355). The cost of this gas to the distributing company was about 20¢ per M c. f. and there was left for the cost of distribution and profit to the distributing company the sum of about 12¢ per M c. f. Today gas with only slightly in excess of 50% of the B. T. U. content is distributed in Lima. The cost of this gas is 36¢ per M c. f. and the distribution expense including the return on investment is about 93¢ per M c. f.

Consequently, it would seem that in spite of protests of counsel for the company, that the cost attributable to distribution of gas from plant to consumer in the city of Lima, Ohio, is about 93¢ per M c. f. and such was the finding of both the commission (Commission opinion, R., 90) and of the Ohio Supreme Court (R., 18).

The Difference Between the Commission and the Company.

The differences between the company and the commission arise by virtue of certain reductions made by the commission in the amounts claimed by the company for operating expenses. These differences computed on the basis of the average for the four years 1928, 1929, 1930 and 1931 of the five year ordinance period and being the years with complete figures available to the commission

at the time it began its investigation, aggregate $77,-384.00. That is, the commission reduced the operating expenses claimed by the company an average of $77,-384.00 a year for the four year period of the ordinance for which complete figures were available to the commission. The entire reduction in average annual operating expenses for the city of Lima for the years 1928-1931, both inclusive, and the items involved therein are shown by the following table:

TABLE No. 1.

DIFFERENCES IN EXPENSES BETWEEN COMPANY AND COMMISSION

Description.	Average Annual Expenses for City of Lima for Years 1928-1931, Both Inclusive		
Expenses:	Company	Commission	Difference
1. Cost of gas sold	$150,362	$146,575	$3,787—
2. Distribution expense	40,622	34,428	6,194—
3. Commercial expense	20,804	19,719	1,085—
4. New business expense	12,110	5,000	7,110—
5. General and miscellaneous expense	47,558	39,235	8,323—
6. Indirect charges to construction—Cr.	(3,825)	(3,804)	21+
7. Retirement allowance	52,539	24,518	28,021—
8. Amortization of pipe line	22,936	.....	22,936—
9. Real and personal property taxes	22,767	22,797	30+
10. State of Ohio—excise tax	7,108	7,114	6+
11. Tax of Public Utilities Commission of Ohio	278	278	.....
12. Federal income tax	8,494	8,504	10+
13. Uncollectible accounts	2,441	2,446	5+
14. Total	$384,194	$306,810	$77,384—

Note: ( ) indicates red figures.

See Appendix "A", page 92, post.

The next table shows the gross revenues from gas service in Lima which would be earned under the rates fixed by the commission. This table shows the gross revenues of the company for gas service in Lima for each of the years 1928, 1929, 1930 and 1931. It also shows the average cost for the four year period. The table shows the expenses as set forth in the commission's corrected findings. These expenses are shown in detail together with a total for each of the years 1928, 1929, 1930 and 1931, and with the average for the four year period. The table then shows net income for each of the four years together with the rate of return and the average. From this table it will be observed that upon the basis of the gross revenues as shown by the company and upon the basis of the expenses as allowed by the commission, corrected as to all mathematical and other errors, and upon the basis of the commission's valuation of $1,901,-696, the company earned for the year 1928 a minimum return of 6.37%; for the year 1929 a return of 5.78%; for the year 1930 a return of 5.88%; a return for the year 1931 of 4.99% and an average for the four year period of 5.75%.

TABLE No. 2.

RATE STUDY

	Year 1928	Year 1929	Year 1930	Year 1931	Average 4 Years
Quantity					
1. M c. f. of gas sold in Lima	395,423.3	399,309.5	380,297.5	354,148.8	382,294.8
Revenues					
2. Gross revenues from gas service in Lima under commission's rates	$432,097	$434,876	$412,995	$384,931	$416,225
Expenses					
3. Cost of gas sold	145,004	153,448	149,143	138,704	146,575
4. Distribution expense	36,265	35,151	31,643	34,651	34,428
5. Commercial expense	20,567	19,363	19,240	19,707	19,719
6. New business expense	5,000	5,000	5,000	5,000	5,000
7. General and miscellaneous expense	37,854	45,974	40,237	32,877	39,235
8. Indirect charges to construction—Cr.	(1,827)	(2,588)	(8,400)	(2,401)	(3,804)
9. Depreciation	24,518	24,518	24,518	24,518	24,518
10. Real and personal property taxes	23,353	24,889	23,121	19,826	22,797
11. Ohio excise tax	7,034	7,382	7,259	6,782	7,114
12. P. U. C. O. tax	286	282	265	280	279
13. Income tax	10,144	8,867	6,878	8,127	8,504
14. Uncollectible accounts	2,768	2,753	2,238	2,034	2,446
15. Total expenses	$310,966	$325,039	$301,132	$290,105	$306,811
Net Income					
16. Net income, line 2 less line 15	$121,131	$109,897	$111,863	$94,826	$109,414
Rate of Return					
17. Based upon commission's valuation of $1,901,696 as of March 31, 1928, and the net income shown on line 16	6.37%	5.78%	5.88%	4.99%	5.75%

Note: ( ) indicates red figures.

See Appendix "A", page 92, post, which shows that the above percentages are the minimum rates of return that would have been earned by the company under the commission rates and that a higher rate of return probably would have been earned.

The commission's reduction in the various operating expenses which were claimed by the company together with the reduction in the rate of return to which the company felt it was entitled, resulted in a somewhat lower schedule of rates. Consequently, this case turns primarily upon the reasonableness of the reductions made by the commission in the operating expenses as claimed by the company and the reduction in the rate of return (8%) contended for by the company.

A summary of the difference in the contentions of appellant and appellee is contained in the decision of the Supreme Court of Ohio in this case. (*The West Ohio Gas Company v. The Public Utilities Commission of Ohio,* 128 O. S., 301, R., 21, 22). The historical development of the case is more fully set forth in the various orders of the appellee (R., 71-73, 82-99, 100-117, 118-124).

Specification of Assigned Errors Intended to Be Urged.

Under the foregoing heading at p. 29 of its brief (appelant's brief, p. 29) appellant recites that the assignment of errors contained twenty-seven paragraphs (R., 58-63) and that all of the assignments of error are to be urged, and that the several assignments of error relate to the findings and order of appellee (affirmed by the Supreme Court of Ohio) in (1) using the annual reports of the company filed with the commission pursuant to the provisions of Ohio Law (2) reducing the operating expenses claimed by the company (3) denying to the company a rehearing and (4) the contention that the Supreme Court of Ohio did not make an independent judicial review of the law and the facts.

SUMMARY OF ARGUMENT.

I.

THE EFFECT OF THE COMMISSION'S ORDER, AFFIRMED BY THE STATE COURT, ON THE EARNINGS OF THE COMPANY.

The rates prescribed by the commission for gas service furnished by the company to the consumers of Lima upon the basis of the actual gross income collected by the company during the four years of the ordinance period for which the figures were available would have produced an average return of 5.75% on a valuation made at 1928 prices for a property having a capacity far in excess of the needs of the community.

II.

APPELLANT'S OPERATING EXPENSES.

The amount allowed appellant for its total annual operating expenses was generous.

The difference in the average annual operating expenses as claimed by appellant and as allowed by appellee for the four year period 1928-1931, inclusive, and being the period for which information was available to the commission at the time it prepared its finding in this matter, corrected as to all mathematical errors, is $77,384.00. Of this total difference $28,021.40 results from

a reduction in the retirement allowance, that is, a reduction in the annual allowance for depreciation made by appellee under the amount claimed by appellant. $22,935.97 results from the refusal of the appellee to allow the amortization claimed by appellant on a 44 mile transmission line used for the purpose of transporting natural gas from the source of supply to the city of Lima. These two items total $50,957.37 and represent all but $26,426.56 of the entire reduction in appellant's operating expenses as made by appellee. The other items reduced and the amounts thereof are as follows: Gas produced and purchased (cost of gas sold) $3787; distribution expense $6194; commercial expense $1085; new business expense $7110; general and miscellaneous expense $8323.00. The importance of determining the proper amount to be allowed as operating expenses has been recognized by this court in the recent case of *Lindheimer v. Illinois Bell Telephone Company*, 292 U. S., 151, 54 S. Ct., 658, 78 L. Ed., 1181 (1934).

Gas Produced and Purchased (Cost of Gas Sold)—The reduction in this item is occasioned by the commission's reducing the amount claimed for unaccounted-for gas from 9% to 7%. It is submitted that an allowance of 7% for losses through unaccounted-for gas is ample and sufficient based upon the knowledge and experience of an administrative commission informed as to such matters and, in fact, is a greater allowance than has

been claimed by or allowed to other gas companies before the commission in recent rate cases:

In the Matter of the Complaint and Appeal of the Columbus Gas & Fuel Company From an Ordinance of the City of Columbus, Ohio, to Fix the Price that May Be Charged for Natural Gas in the City of Columbus, Ohio, No. 5935;

Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio, 127 O. S., 109, 187 N. E., 7;

Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio, 292 U. S., 398, 54 S. Ct., 703, 78 L. Ed., 1327.

In the Matter of the Complaint and Appeal of The East Ohio Gas Company, No. 7130, Before the Public Utilities Commission of Ohio, decided September 19, 1934.

Distribution Expense—Distribution expense includes such items as superintending distribution of gas, work on customers' premises in connection with service, changing meters to measure gas sold, maintenance of local distributing mains, service and meters. The difference between the amount claimed by the company for this item and the amount allowed by the commission rests entirely upon a different method used in computation. It is necessary that this expense for a company serving several communities be allocated to the community which is involved in the rate litigation. The commission chose the method of allocating this expense upon a per customer basis. The company insists that it should have been allocated on a gas consumption basis. We believe, however, that where the company's total distribution expense is accepted without question by the commission and allocated on a per customer basis to the

various communities served by the company a fair distribution expense has been allowed to the company. Certainly this court will not be concerned with the method selected by an administrative commission in allocating this expense so long as it represents a fair and reasonable one and the method so selected should not be disturbed simply because the company feels that it would have been better satisfied with the use of another method. The method as used by the commission was approved by the Supreme Court of Ohio in *West Ohio Gas Company v. Public Utilities Commission of Ohio*, 128 O. S., 301.

Commercial Expense—The commercial expense was likewise allocated to the particular community involved in this litigation upon the basis of a per customer average. The difference between the amount contended for by the company and the amount allowed by the commission is slight and we again submit that where the company's total commercial expense is accepted without question by the commission and allocated to the various communities served by the company on a consumer basis a fair and reasonable commercial expense has been allowed to the company and we do not believe that this court is concerned with the method of allocation so long as the result achieved is fair.

Los Angeles Gas and Electric Corporation v. Railroad Commission of the State of California, 289 U. S., 287, 77 L. Ed., 1180.

New Business Expense—The company insists that the commission was bound to accept the amount which it alleged that it had expended for the purpose of securing

new business. The amount for which the company was contending was considerably higher during the four year period which is involved in this rate litigation than had been expended by the company in previous years and the evidence did not disclose that any substantial beneficial results had been obtained from this expenditure. In fact, the record indicates that the most effective aid to the securing of new business on the part of this company would have been a reduction in its rates. Certainly an administrative commission is not bound to include in the operating expenses claimed by a public utility an arbitrary amount which may have been expended for the securing of new business where the circumstances do not warrant the expenditure of the amount claimed and the results are unsatisfactory.

General and Miscellaneous Expense—The differences between the company and the commission relating to general and miscellaneous expense aggregate $8323.00 annually. A large part of this difference arises by virtue of the disallowance on the part of the commission of rate case expense. The remainder arises by virtue of the commission method of allocating this expense upon a per customer basis as opposed to the company's contention that it should have been allocated upon a gas consumption basis. It is admitted by the company that general and miscellaneous expenses are incurred generally by the company as a whole and include the expense of administration and other costs that have to do with the administration of the company. Certainly under the circumstances and where the company's general and

miscellaneous expense is accepted by the commission without question and allocated to the various communities served by the company on a per customer basis, a fair and reasonable general and miscellaneous expense has been allowed to the company. As a matter of fact, the allowance on the part of the commission for this particular item was exceedingly generous for it permitted the inclusion without any reduction whatsoever of amounts spent by the company for contributions for sustaining chambers of commerce, local charitable contributions, membership dues in national and state utility associations and traveling expenses to their conventions as well as an allowance of more than $4450.00 a year for services supposedly rendered by the parent company. Many of these allowances under the law should have been excluded from the operating expenses.

Re New York Telephone Company, P. U. R., 1932D, 20 (1932) (New York Public Service Commission);

Re New York Telephone Company, P. U. R., 1933C, 409 (Interstate Commerce Commission);

Re Lone Star Gas Company, P. U. R., 1932C, 1 (Oklahoma; Re Reservations, Contributions and Donations; Interest During Construction and Property Not Used in Operations [D. C.]), P. U. R., 1930D, 113, 114;

Herring v. Clarks Ferry Bridge Company (Pennsylvania), P. U. R., 1926D, 514, 529;

Idaho Power Company v. Thompson, 19 Fed. (2d), 547, P. U. R., 1927D, 388 (Federal);

Re Citizens Independent Telephone Company (Indiana) (1920), P. U. R., 1930A, 431;

Rock Port v. Clifton (Missouri), P. U. R., 1927E, 470;

Re Crystal City Gas Company (New York), P. U. R., 1925E, 91;
Re Southern California Edison Company, P. U. R., 1924C, 1 (California);
Municipal Gas Company v. Wichita Falls (Texas), P. U. R., 1924B, 410;
Re Idaho Power Company (Idaho), P. U. R., 1924C, 731;
Railroad Commissioners v. Hughes Electric Company (N. D.), P. U. R., 1925A, 18.

Rate Case Expense—The company contended for a rate case expense of $30,607.69 amortized over a period of five years at the rate of $5790.00 per year. This apparently being the total amount of the expense which they have incurred in this particular litigation. Whether the allowance of any amount for rate case expense should be permitted under the circumstances of this case, it is evident that under the law the company is not entitled to insist upon the inclusion of this amount in their annual operating expenses for the purpose of establishing confiscation.

New York & Queens Gas Company v. Newton, 269 Fed., 277;
Reno Power, Light and Water Company v. Public Service Commission, 298 Fed., 790;
Columbus Gas & Fuel Company v. City of Columbus, 17 Fed. (2d), 630;
Public Reports Digest, Volume 2, p. 1553.

State Excise Tax—The company was not injured by the failure of the commission to include in its operating expenses a purely emergency tax passed by the Ohio Legislature and which was effective only during the last year of the ordinance period involved in this case.

Retirement Reserve Allowance—The annual depreciation allowed by the appellee is ample and sufficient and exceeds the actual experience of the company for this item. The company insists upon an allowance of $53,639 a year to cover its annual depreciation requirements. Presumably this allowance represents 3% of the total depreciable property. The commission allowed for this item the sum of $24,518.04, being 1.4% of $1,751,288.60 of depreciable property as of March 31, 1928. The actual experience of the company over a seven year period from 1925 to 1931 showed an annual depreciation of 9/10 of 1% and on the basis of that charge the company has been able to accumulate $327,766.87 as an unexpended balance in depreciation reserve and amortization as of December 31, 1931, while at the same time keeping its property, upon the basis of the testimony of its own witnesses, in 100% condition. Certainly when it is considered that the company's property, according to its own evidence, has been maintained in 100% condition and that it would today be impossible "to expend economically and sensibly as much as $200,000.00" on the property to improve it, no justification can be conceived for the company's contention that an annual allowance of 3% is necessary, and particularly is this true when the evidence discloses that the actual experience of the company over a seven year period in the meeting of the expense of depreciation has been less than 1% per year, on the basis of which allowance they have accumulated an unexpended balance in depreciation reserve and amor-

tization reserve as of December 31, 1931, in the amount of $327,766.87.

Smith v. Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255;
Dayton Power and Light Company v. Public Utilities Commission of Ohio, 292 U. S., 290, 78 L. Ed., 1267;
Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio, 292 U. S., 398, 78 L. Ed., 1327.

As a matter of fact, the allowance of the commission for annual depreciation consisting of 1.4% of the depreciable property valued at $1,751,288.60 as of March 31, 1928, was not only adequate for this particular item but, in view of the evidence in the record, was exceedingly generous.

The Question of Amortizing the Forty-four Mile Transmission Line—There is not the slightest justification for the inclusion in operating expenses of $22,935.97 a year for the purpose of amortizing a transmission line used to convey natural gas into the city of Lima when it is admitted that the transmission line is used and useful in the company's business and will continue so for an indefinite period in the future and this is particularly true when it is realized that this same transmission line is at the present time maintained by the Ohio Fuel Gas Company under and by virtue of the terms of its contract with the West Ohio Gas Company providing for the sale of gas to the West Ohio Gas Company and that, in addition, the entire value of the line allocable to Lima is included in the base of $1,751,288.80 fixed by the commission as the value of the depreciable property on which the allowance of 1.4% as an annual depreciation charge was computed.

III.

RATE OF RETURN.

A rate of return approximately 6% for the period 1928-1931, inclusive, upon a valuation base as of March 31, 1928, of a property with a physical capacity far in excess of the needs of the community served is a fair and adequate rate of return and in no way confiscatory. In fact, in the light of the circumstances presented a lower rate of return would be justifiable.

The appellant insists that to avoid confiscation of its property it must have an 8% rate of return. This court has repeatedly recognized that what will constitute a fair rate of return is not a matter to be decided by the blind application of percentages but depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment having regard to all relevant facts.

> *Smith v. Illinois Bell Telephone Company*, 282 U. S., 133;
> *Bluefield Water Works and Improvement Company v. Public Service Commission*, 262 U. S., 679, 67 L. Ed., 1176.

The property of the company devoted to public service in the furnishing of gas to the consumers in Lima, Ohio, is far in excess of the needs of the community. It represents the combined facilities of a natural gas plant and an artificial gas plant either one of which has a capacity

sufficient to supply a community larger than Lima. Very properly the commission might have excluded from the valuation base a large part, if not all, of the plant devoted to manufacturing gas.

Los Angeles Gas and Electric Corporation v. Railroad Commission of the State of California, 289 U. S., 287.

Another circumstance disclosed by the record is that the average rate per thousand cubic feet for gas furnished to the consumers in Lima is exceptionally high and is greater than that being collected in other communities similarly situated. While the cost of gas produced is only 36¢ per thousand cubic feet the average cost to the consumer for the first thousand cubic feet of gas furnished is $1.29. This expense of distribution and profit in the amount of 93¢ per M c. f. is abnormally high when it is compared with the distribution expense of 16¢ per M c. f. approved by this court in the case of the *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio*, 292 U. S., 398, 78 L. Ed., 1327, and with the distribution expense of less than 20¢ per M c. f. approved by this court in the case of *Dayton Power and Light Company v. Public Utilities Commission of Ohio*, 292 U. S., 290, 78 L. Ed., 1267.

Certainly a utility is not entitled to a large rate of return upon the valuation of a property whose capacity far exceeds the needs of the community when the cost of the product which it sells is so abnormally high as to be almost prohibitive. As a matter of fact, the rate of re-

turn should be adjusted downward when the price of the commodity sold is not reasonable from the viewpoint of the worth of the service.

Smyth v. Ames, 169 U. S., 464; 42 L. Ed., 819; 185 S. Ct., 416;
Whitten and Wilcox, Valuation of Public Service Corporations, 2nd Edition, 1928, Vol. 1, Sec. 60, p. 77;
Re Los Angeles Gas & Electric Corporation, P. U. R., 1917F, 717;
Re Coast Counties Gas & Electric Co., P. U. R., 1924C, 415;
In *Benicia v. Benicia Water Co.*, (1923) 23 Cal. R. C. R., 213;
Re Colorado Springs Light, Heat & Power Co., P. U. R., 1916E, 650;
Belleville v. St. Clair County Gas & Elec. Co., P. U. R., 1915F, 235, P. U. R., 1916B, 24;
Re Central Illinois Public Service Company, P. U. R., 1919E, 910;
Re Illinois Gas Company, P. U. R., 1921B, 430;
In re Kampsville Electric Light & Power Co., (1921) 1 Ill. C. C. R., 51;
Re Indiana Fuel & Light Company, P. U. R., 1921E, 381;
Re Castine Water Company, P. U. R., 1924B, 529;
Re United R. & Electric Co., P. U. R., 1928C, 604;
Donham v. Public Service Commission, P. U. R., 1919C, 880, 232 Mass., 309, 122 N. E., 397;
Re Citizens Telephone Company, P. U. R., 1931C, 162;
Re Nashville R. & Light Co., P. U. R., 1929A, 664;
Department of Public Works ex rel. Friday Harbor v. Friday Harbor Light & P. Co., P. U. R., 1928E, 660;
Re Wisconsin Traction, Light, Heat & P. Co., P. U. R., 1919B, 224;
Re Interstate Light & P. Co., P. U. R., 1921E, 161;
Re Duluth Street R. Co., P. U. R., 1928B, 228;

Re Milwaukee Electric R. & Light Co., P. U. R., 1930C, 426;
Re Community Telephone Co., P. U. R., 1931C, 285.

The appellant apparently disregards also the fact that the past five years have represented a period of serious business depression of which this court has taken judicial notice. *Los Angeles Gas & Electric Corporation v. Railroad Commission of the State of California*, 289 U. S., 287, 77 L. Ed., 1180; *Atchison, T. & S. F. R. Co. v. United States*, (1932) 284 U. S., 248, 260, 262, 76 L. Ed., 273, 52 S. Ct., 146; *Dayton Power and Light Company v. Public Utilities Commission of Ohio*, 292 U. S., 290, 78 L. Ed., 1267. Other courts likewise have recognized this period of economic stress in the reduced rates which they have approved as non-confiscatory for public service corporations.

Smith v. Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255;
Illinois Bell Telephone Company v. Gilbert, 3 Fed. Supp., 595 (1933);
Re Yonkers Railroad, P. U. R., 1933B, 61 (1932) (New York Public Service Commission);
Re Kentucky-Tennessee L. & P. Company, P. U. R., 1932E, 386, 393 (Tenn.);
In re Chesapeake & Potomac Telephone Co., P. U. R., 1933E, 193 (P. U. C. of D. C.);
In re Northwestern Electric Company, P. U. R., 1933A, 493 (1932) (Oregon commission);
In re West Coast Telephone Company, P. U. R., 1933A, 487 (1932) (Washington Department of Public Works);
Re Lone Star Gas Company, P. U. R., 1933C, 1 (Oklahoma Commission);

City of Charleston v. Public Service Commission, P. U. R., 1931E, 74 (1931) (West Va. Supreme Court of Appeals);
Kankakee Water Co. v. Gilbert, P. U. R., 1933B, 145 (1933) (U. S. D. C. E. D. Illinois);
Ohio Associated Telephone Co. v. Frank W. Geiger, 3 Fed. Supp., 997, P. U. R., 1933E, 491 (1933).

The recent decisions of this court well illustrate the fact that the necessary and proper result of the application of the law is to reduce the fair rate of return for utilities in times of economic depression such as has prevailed throughout the life of the ordinance under discussion.

Los Angeles Gas and Electric Company v. Public Service Commission, 289 U. S., 287, 319 (1933);
Wabash Valley Electric Company v. Young, 287 U. S., 488-501 (1933);
Smith v. Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255 (1936);
Dayton Power and Light Company v. Public Utilities Commission of Ohio, 292 U. S., 290, 78 L. Ed., 1267 (1934);
Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio, 292 U. S., 398, 78 L. Ed., 1327 (1934).

Certainly the value of the company's property which was made on the basis of prices existing as of March 31, 1928, would not be as great during any of the succeeding years of the ordinance period as it was during the ~~ordinance~~ period and yet in spite of all this the appellant insists upon a rate of return of 8% upon a valuation made at a price level existing in 1928 for a property that

is far in excess of the needs of the community that it serves. As a matter of fact, the company has never had any experience under the rates proposed by the commission for the reason that throughout this period of litigation they have continued to collect the higher rates formerly in effect. No consideration, therefore, has been given to a possible increase in the rate of return which might result from a reduction in the price of their commodity.

IV.

THE ANNUAL REPORTS FOR THE YEARS 1928-1931, INCLUSIVE, FILED WITH THE COMMISSION BY THE COMPANY PURSUANT TO THE PROVISIONS OF THE OHIO STATUTES AND PUT IN EVIDENCE AS COMMISSION EXHIBITS 1, 2, 3 AND 4 BY THE ORDER OF THE COMMISSION ON ITS OWN MOTION.

The company contends that the decision of the commission was based upon evidence not properly introduced in the record and argues that the commission resorted to the use of annual reports filed with the commission by the company pursuant to the provisions of the Ohio statutes. The record clearly discloses that these reports were put in evidence by the commission upon its own motion and that the company does not now urge that any of the information contained therein was prejudicial to it or incorrect. As a matter of fact, when the company filed its application for a rehearing before the commis-

sion its only objection to the introduction of these reports was that the report for 1932 had not been included. It did not object to the contents of the reports or allege in what manner it was prejudiced by their being placed in the record. Not having raised this question in its application for a rehearing, under the Ohio statutes, Section 543, General Code, it was not entitled to raise it in the Supreme Court of Ohio. It is perfectly obvious, however, that the company was treated entirely fairly in the use of these annual reports and the principle of due process of law was not violated by the commission's including them in the record.

Snyder v. Massachusetts, 291 U. S., 97, 78 L. Ed., 674.

V.

VARIOUS OTHER CONTENTIONS ADVANCED BY APPELLANT.

The appellant contends that the court erred in not finding that the validity of the rate order must be determined by its effect on net earnings from year to year and that the rate order and the order to refund were invalid because this requirement had not been complied with. When it is considered that this ordinance was a rate ordinance covering a period of more than five years and that more than four years of the period had expired when the commission rendered its opinion the fallacy of the company's contention in this regard becomes apparent.

The contention that the state Supreme Court erred in not holding that the rate order is invalid because the commission refused to grant the company a rehearing.

There was no basis upon which the company should have been granted a rehearing. To have further delayed the case for the purpose of granting a rehearing would have been highly improper.

The contention that the state Supreme Court did not make that independent judicial review of the law and the facts which due process and equal protection of the laws require.

This contention seems to be a part of the recognized formula followed by all utilities when an appeal is taken to this court.

> *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 292 U. S., 398, 54 S. Ct., 703, 78 L. Ed., 1327;
> *Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 292 U. S., 290, 78 L. Ed., 1267.

The decision of this court in the Columbus Gas case, supra (1934), holding that the Supreme Court of the United States will presume in reviewing a decision of a state court that the testimony in the record was given due consideration effectively disposes of this contention of the appellant.

ARGUMENT.

I.

THE EFFECT OF THE COMMISSION'S ORDER, AFFIRMED BY THE STATE COURT, ON THE EARNINGS OF THE COMPANY.

The rates prescribed by the commission for gas service furnished by the company to the consumers of Lima upon the basis of the actual gross income collected by the company during the four years of the ordinance period for which the figures were available would have produced an average minimum return of 5.75% on a valuation made at 1928 prices for a property having a capacity far in excess of the needs of the community.

The company discusses at great length certain mathematical errors made by the commission in its original order. These errors were promptly corrected by the commission and its counsel prepared and included a corrected table in the supplemental brief filed in behalf of the commission in the state court (see Lima Ex. A, p. 186A, appellant's brief and Lima Exhibit B, p. 187A, appellant's brief, Tables I and II, pages — ~~infra~~) 10 + 12 Supra

These tables disclosed that the average gross revenues from gas service in Lima under the rates prescribed by the commission would have been not less than $416,225 and that the total average expenses of the company allowed by the commission were $306,811.00 leaving to

the company as average net income for the period the sum of $109,414.00 and that this amount would result in an average rate return to the company of 5.75% upon a valuation of $1,901,696 as of March 31, 1928.

These are the facts and a discussion of alleged errors no matter how voluminous will not change them.

The appellant recognizes the correctness of the average revenue that would have been produced under the commission's rates at p. 130 of its brief (Appellant's brief p. 130) in the following language:

> "The record shows that the rates ordered in effect by the commission would produce an average revenue of approximately $416,000.00 a year during the first four years of the ordinance period. (Appendix A, pp. 179A, 183A, infra.)"

The appellant contends, however, that its true operating expenses averaged $384,000 a year (Appellant's brief, p. 130). The average operating expenses as allowed by the commission and corrected as to all mathematical errors were $306,811.00, the difference being $77,384.00.

The question presented therefore resolves itself into whether the reduction by the commission approved by the state court of operating expenses as contended for by the company were justifiable and whether a minimum rate of return of 5.75% for the period involved was confiscatory.

In considering these questions certain facts must be kept in mind. It must be remembered that the capacity of the company's property far exceeds the needs of the

community that it serves. (R., 201, 204, 205, 206, 248, 249, 265, 292, 301, 427, 428.) That the valuation of that property upon which the rate of return was computed was made at a price level existing as of March 31, 1928 (R., 83), and that the real value of the property during the succeeding years of the ordinance period has been considerably less than the value used as the rate base (R., 478, 511, 512). That the period involved represents a period of profound economic changes and depression. That the gas furnished to Lima is a mixed gas inferior in quality to natural gas (R., 195, 196). That the price of this gas is exceedingly high (R., 90, 273). That the company throughout the period has met its fixed charges, paid dividends on its stock and, according to the testimony of its own witnesses, maintained its property in 100% condition (R., 131, 167, 168) and, finally, that the company does not know how much greater its income might have been under the reduced rates fixed by the commission for it has continued to collect throughout this litigation the high rates formerly charged by it and the computation of gross revenues under the commission rates was arrived at upon the basis of sales under the company's rates. If the commission rates had been in effect increased sales certainly would have resulted.

With these factors in mind we approach the problems presented of (a) were the reduction in the company's operating expenses as made by the commission and approved by the state court justifiable and (b) was the rate of return allowed by the commission and approved by the state court confiscatory.

II.

APPELLANT'S OPERATING EXPENSES.

The importance of determining the proper amount to be allowed as operating expenses has been recognized by this court in the recent case of *Lindheimer v. Illinois Bell Telephone Company*, 292 U. S., 151, 54 S. Ct., 658, 78 L. Ed., 1182 (1934) where it held in par. 3 of the syllabus:

> "3. Charges to operating expenses may be as important as valuations of property in determining whether a public service commission's order establishing rates for telephone service is confiscatory."

Discussing this topic in the opinion, Mr. Chief Justice Hughes speaking for the court says: (p. 164.)

> "Operating expenses. In determining the effect of these reductions, and what amounts would still be available to the company for net return, we come to the questions raised by the company's charges to operating expenses. Charges to operating expenses may be as important as valuations of property. Thus, excessive charges of $1,500,000 to operating expenses would be the equivalent of 6% on $25,000,000 in a rate base. In this instance, against the reductions which the rate in suit would have effected, are the considerable sums which would be added to the amounts available for return by the adjustments in operating expense made by the District Court * * *".

The difference in the annual operating expenses as claimed by appellant and as allowed by appellee is $77,384.00.

The items comprising this difference are set forth at p. 10., supra. Of the total difference $28,021.40 results from a reduction in the retirement allowance, that is, a reduction in the annual allowance for depreciation made by appellee under the amount claimed by appellant.

$22,935.97 results from the refusal of the appellee to allow the amortization claimed by appellant on a 44 mile transmission line used for the purpose of transporting natural gas from the source of supply to the city of Lima and which admittedly is used and useful in the conduct of the company's business and will continue so for an indefinite period of time. The expense of maintaining this transmission line is borne by the Ohio Fuel Gas Company under the terms of its contract with appellant covering the sale of natural gas and, in addition, the value of the line allocable to Lima is included in the base fixed by the appellee as the value of the depreciable property on which the annual depreciation charge was allowed.

These two items total $50,957.37 annually or all but $26,426.56 of the difference in the amount claimed by the appellant and the amount allowed by appellee for operating expenses.

The appellee also reduced the expense of gas produced and purchased as claimed by appellant to the extent of $3,786.83; distribution expense to the extent of $6,194.11; commercial expense to the extent of $1,085.25; new business expense to the extent of $7,110.20, and general and miscellaneous expense to the extent of $8,322.80.

The appellee increased the expense as claimed by the company in six other items. These increases, however, were small and insignificant so far as the consideration of this case is concerned.

1. Gas Produced and Purchased (Cost of gas sold).

An allowance of 7% for losses through unaccounted for gas is ample and sufficient based upon the knowledge and experience of an administrative commission informed as to such matters.

The company claims that for the four-year period from 1928 to 1931, both inclusive, which was the period used by the commission on the basis of the figures available to it at the time its opinion was prepared, the average cost of gas produced and purchased for each year was $150,361.75. The commission allowed for this same period the sum of $146,574.92, making a difference of $3786.83.

The difference in this item between the amount contended for by the company and the amount allowed by the commission rests primarily in the amount allowed by the commission for unaccounted for gas, the company claiming a 9% allowance for unaccounted for gas and the commission allowing 7% to cover this item. It should be borne in mind that the claim of the company is predicated upon the flat assertion made in the record to the effect that 9% of their gas was unaccounted for. Where it went was not explained. The commission felt, and so found, that this amount was excessive under all the cir-

cumstances and that 7% was an ample allowance for unaccounted for gas and in passing upon this particular item in its opinion said: (Commission Opinion R., p. 95.)

> "An estimate of leakage in the Lima case, based upon the amount purchased and manufactured as compared to the amount distributed, would indicate an average leakage of 9%. This, we believe to be excessive and with proper care of the system could be reduced to 7% which we allow. This reduction of 2% in leakage is reflected in a corresponding reduction in the cost of gas sold which appears in the operating statistics presented below."

Certainly, the commission in the light of its knowledge and information as an administrative commission does not have to accept the flat assertion of the company as to the amount of unaccounted for gas that may be included in its operating expenses.

In the case of the Columbus Gas Company (in the matter of the complaint and appeal of the Columbus Gas & Fuel Company from an ordinance of the city of Columbus, Ohio, to fix the price that may be charged for natural gas in the city of Columbus, Ohio, No. 5935) the company claimed only 6½% for unaccounted for gas and the commission allowed but 5% for this item. This allowance was approved by the Supreme Court of Ohio, *Columbus Gas & Fuel Company* v. *Public Utilities Commission of Ohio,* 127 O. S., 109, 187 N. E., 7, and the findings of that court in that regard were not disturbed when that case was presented to this court. *Columbus Gas & Fuel Company* v. *Public Utilities Commission of Ohio,* 292 U. S., 398, 54 S. Ct., 703, 78 L. Ed., 1327.

In the case of the East Ohio Gas Company (in the matter of the complaint and appeal of the East Ohio Gas Company No. 7130 before The Public Utilities Commission of Ohio) decided by the commission on the nineteenth day of September, 1934, the company voluntarily made the statement that leakage in the East Ohio Gas system amounted to only 3½%. Under the circumstances the commission did not abuse its discretion when it reduced the amount claimed for unaccounted for gas from 9% to 7%.

2. Distribution Expense.

Where the company's total distribution expense is accepted without question by the commission and allocated on a per customer basis to the various communities served by the company, a fair and reasonable distribution expense has been allowed to the company.

The company claims as an average for the four-year period from 1928 to 1931, inclusive, the sum of $40,622.11 for distribution expense. The commission allowed for this same period for distribution expense the sum of $34,428, or $6194.11 less per year than was contended for by the company.

Included in distribution expense are such items as superintending distribution of gas, work on customers' premises in connection with service, changing meters to measure gas sold, maintenance of local distributing mains, service and meters. The company relied upon Company Exhibit No. 104 to substantiate their allocation

which was based largely on a gas consumption basis. The commission took the view that a per customer basis was the only fair way to allocate distribution expense and also commercial expense and general and miscellaneous expense. It, therefore, took the annual reports of the company from which it developed the following:

Number of Customers (from Annual Reports.)
Entire Company.

Year	*Average*	*Lima*
1928	15,209	10,045
1929	15,916	10,139
1930	15,912	9,832
1931	16,183	9,152

Dividing the total amount of distribution expense shown in the annual report for each year by the number of customers in the entire system produced a per customer cost for this item which it multiplied by the number of Lima customers, as shown in the above table. It will be recognized that it is necessary to allocate distribution expense to Lima and it should be equally well recognized that the use of a per customer method of allocation is a fair and reasonable one and, as a matter of fact, in so far as Lima is concerned, that particular method of allocation should result in a more favorable figure to the company for the reason that the per customer cost should be less in a city of the size of Lima than in smaller communities. However, the company contends that this method of allocation results in a higher per capita charge to Lima customers and to support that theory they urge that there is more paving to

be cut in making main repairs, higher wages to be paid and higher percentage of customer change in Lima than in other communities served by this company. These facts, however, are not shown by any testimony in the record. On the contrary, the company's method tends to unfairly raise the per customer distribution expense in the city of Lima as this allocation for such expense is based on volume of gas consumed. Common sense would seem to indicate that where the company's total distribution expense is accepted without question but allocated to various communities on a per customer basis the company should not be heard to complain.

The company cites the cases of *Northern Pacific Railway Company v. North Dakota,* 236 U. S., 585, and *Banton v. Belt Line Railway,* 268 U. S., 413, to support their contention that the commission erred in using the per customer method of allocation, in so far as distribution expenses are concerned. An examination of those cases, however, discloses that they require classification only of each kind of expense. The commission found by its method that the average distribution expense per customer for each of the four years involved was $3.52. The commission's judgment is best expressed in its own language which is as follows: (Commission's Opinion, R., 93.)

> "These expenses, in the opinion of the commission, represent items which should be distributed against all the consumers of the entire system of the West Ohio Gas Company. It is felt that consumers in Lima should bear no higher portion of these expenses than other consumers."

The Supreme Court of Ohio in passing upon this question makes the following statement: (*West Ohio Gas Company v. Public Utilities Commission of Ohio,* 128 O. S., 301, R., 27.)

> "We see nothing unfair in this method, and on readjustments we fail to see where the gas company was treated unfairly."

3. Commercial Expense.

Where the company's total commercial expense is accepted without question by the commission and allocated to the various communities served by the company on a per customer basis, a fair and reasonable commercial expense has been allowed to the company.

The commercial expense contended for by the company on an annual average basis for the years 1928 to 1931, inclusive, was $20,804.25 for each year. The amount allowed by the commission for this item was $19,719 for each year, and the difference is $1085.25.

The items included in this expense are such things as cost of reading meters, keeping customers' accounts, and sending out and collecting bills.

The commission in computing the allowance for commercial expense again took the exact amount shown by the company in its annual reports for each of the four years examined, allocated on a per customer basis. The results of these are shown for each of the years in the table of expenses. The company contends that a higher per capita cost is incurred in the city of Lima for rendering the services hereinbefore described than is in-

curred over the whole system. We believe it is perfectly apparent that in a large community the costs which are here involved should be less per customer than in a small community and we believe it should be recognized that the cost of meter reading in one town is not much greater than the cost of reading a meter in another town and, if anything, it should be less in larger towns where the houses are closely built up than in less populated sections. It should also be obvious that it doesn't cost any more to keep a customer's account in one city than in another and it should not cost any more to send out and keep bills in one city than in another. When these perfectly apparent facts are considered the presumption at least arises that the company is attempting to allocate a higher than reasonable cost to a city wherein is involved a rate controversy than in the other communities where no such rate litigation is going forward.

And the fallacy of the company's entire argument is contained in the last sentence of its very brief discussion of this topic at page 96 of its brief (Appellant's Brief, p. 96) wherein the following statement appears:

> "There is no place in these charges for the use of company averages *even if properly arrived at* and the reduction made by the commission in this item of expense must be corrected. (Italics ours.)

This contention of the company is not supported by the recent decision of this court in the case of *Los Angeles Gas and Electric Corporation v. Railroad Commission of the State of California,* 289 U. S., 287, 77 L. Ed.,

1180, wherein this court held at paragraph 1 of the syllabus:

> "In a suit involving the validity of rates fixed by a state public service commission, the Supreme Court of the United States does not sit as a board of revision, but to enforce constitutional rights, and is not concerned either with the method used in reaching the determination except as it may have a definite bearing on the validity of the result reached, or in the determination itself, so long as constitutional limitations are not transgressed."

4. New Business Expense.

An administrative commmission is not bound to include in the operating expenses claimed by a public utility an arbitrary amount which the utility may have expended for the purpose of securing new business where the circumstances do not warrant the expenditure of the amount claimed and the results—in so far as the obtaining of new business is concerned, are unsatisfactory.

It is the contention of the company that there should have been allowed to it in its operating expenses the sum of $12,110.20 annually for the purpose of obtaining new business. To support that contention it produced as an exhibit Company Exhibit 104 (11), (R., 540) and insisted that the commission was bound to accept the amount shown in that exhibit, without regard to whether or not the commission felt the expenses were justifiable, as the amount which must be allowed for this item. It is perhaps of more than passing significance that the new business expense shown in this exhibit for the year

1927 was $7445.34 as compared to the average now claimed of $12,110.20 for the period during which this rate litigation has been in process. The commission found that the amount claimed by the company was in excess of what it should have expended and in excess of the amount that, in the opinion of the commission, it was reasonable to expend for this particular purpose, and reached a conclusion that an expenditure of $5000 per year was adequate. The testimony produced by the company in an attempt to justify the expenditure for this item is found in the record at pages 339-344, 359-360, 368. This testimony discloses that the company has continually lost business during the period involved (R., 59) and that the amount of gas sold has likewise diminished. (R., 360.) Testimony also was introduced by the witness for the city to the effect that the expenditure claimed by the company was not warranted in view of the results obtained. (R., 453.)

As a matter of fact, the commission tried with the utmost diligence to discover from the company's witness just what services were included in this cost for obtaining new business without any particular degree of success. This court will be able to obtain a fair idea of the type of testimony which was introduced by the company to support its allegations for an allowance in excess of $1000 per month for new business expense from the following statement by the company's witness: (R., 343.)

> "Commissioner Geiger: You mean that you have got to demonstrate to a person how to light a natural gas burner?

"The Witness: In some instances, that is far fetched, but in some instances you do find people that are so — dumb they can't light a gas light but that isn't general."

The commission in passing upon this matter said: (Commission's opinion, R., 95-96.)

"This item has been reduced to $5000. The company's figures indicate that, over the four years in question, the average new business expense was $12,045.00, varying from $10,412.00 in 1928 to a maximum of $13,485.00 in 1930.

"The testimony in this case has not convinced the commission that the expenditures under this head should be allowed as a burden upon the present consumers, in the full amount that may have been spent, by the company for the purpose of expanding its business. It is, of course, conceivable that the more new business that is gained for the company, the less will be the burden upon the individual consumers in the form of rates. However, this has not been the result from experience. There has been no appreciable expansion of business, due, to some extent, to the depression, and as we believe, also to the high price charged for the gas sought to be sold. We are willing to allow this item, in what we deem an ample sum, in the flat amount of $5000.00 per year, which is reflected in the table below."

The whole contention of the company relative to the amount that must be allowed for this item is based upon the theory that since this is the amount that has been expended the commission must accept that amount and include it in the company's operating expenses regardless of whether or not the commission in the exercise of its judgment and discretion feels that the amount is prop-

erly expended or is a reasonable expense for the item in question and that unless the commission can show by positive evidence that the expenditure was made fraudulently or in bad faith the amount must be allowed in its entirety as contended for by the company. If such a rule is applicable and if the commission must accept without question and without regard to the circumstances all amounts expended by the company in attempting to develop new business it will obviously be unable to fix reasonable rates because it will never know from year to year how much more expense the company contemplates in that direction. It is apparent from the present case that the company has increased the amounts for this item since the inception of this rate proceeding. On the basis of this argument they might have spent as much as $100,000.00 a year for new business and unless and until the commission could show that they had acted fraudulently or in bad faith they would insist that such an expenditure was justifiable. The most serious problem that this company has in securing new business arises out of the fact that the rate for an inferior grade of gas is excessively high and the following testimony given by the company's witness fully illustrates that fact: (R., p. 389.)

"Q. You are now spending, Mr. Pringle, approximately ten thousand dollars a year trying to secure new business? A. Yes, sir.

Q. And the hardest job that department has is to sell and convince people that they can afford to pay that price? A. I assume so.

Q. And your new business department could do a

great deal more business if your gas were cheaper, couldn't it, by any rule of business economics that you know anything about? A. I assume so.

Q. You do not take anything like that into consideration in your figures? A. No, sir."

5. General and Miscellaneous Expense.

Where the company's general and miscellaneous expense, with the exception of rate case expense, is accepted by the commission and allocated to the various communities served by the company on a per customer basis, a fair and reasonable general and miscellaneous expense has been allowed to the company and the company is not entitled to insist upon the inclusion of rate case expense for the purpose of establishing confiscation.

It is the contention of the company that its annual average expenditure for the item of general and miscellaneous expense for the four-year period involved was $47,557.80. The commission average expense for the same period was $39,235.00, making a difference of $8,322.80 per year in the amount contended for by the company and the amount allowed by the commission. A substantial portion of the difference consists in the amount which the company alleges should have been allowed it for rate case expense and the remaining difference arises by virtue of the use on the part of the commission of the per customer method of allocation rather than the consumption method of allocation insisted upon by the company.

At page 108 of its brief (Appellant's Brief, p. 108) the appellant makes the following statement:

> "General and miscellaneous expenses are incurred principally for the company as a whole. Under this account are included the expenses of administration and other costs that have to do with the general management of the company (R., 541, 545-8.)"

In view of this frank admission of the company it is difficult for us to understand why they now insist that the per customer method of allocation of general and miscellaneous expense is untenable when it is recognized that these expenses are incurred in the administration of the affairs of the company. We feel the commission's method of allocation on a per customer basis will be recognized as a perfectly sound and logical one. The company attempts to establish the fact that certain of these direct expenses are assessed against the city of Lima and not against the operations of the company (Company Exhibit 104, 16, R., 544.) The largest part of these so-called direct costs which they attempt to assess against the city of Lima consist of rate case expense and charitable contributions and donations. The total is negligible and would not affect the result of this case in any degree.

The only explanation that appears in the record relating to Schedule 16, Exhibit 104, supra, is found at page 349 where the witness stated that these amounts were charged directly on the books to Lima.

The company recognizes that it is necessary to allocate general and miscellaneous expenses to the various com-

munities involved and insists that this should be done upon the basis of gross revenues from gas sales. The only purpose, of course, in so doing is to show a higher operating cost for the city of Lima. It should be perfectly apparent that the per customer basis of allocation used by the commission is sound and the commission certainly did not commit an administrative error with which this court is concerned in choosing that method of allocation rather than the method insisted upon by the company.

As a matter of fact, the company fared rather well at the hands of the commission with respect to general and miscellaneous expense for the commission allowed the entire amount claimed by the company with the exception of rate case expense which will be discussed post and included in this item of general and miscellaneous expense allowances for contributions for sustaining chambers of commerce, annual local charitable contributions, occasional civic and charitable special funds, other donations, chamber of commerce membership dues, national and state utility association dues, other association expenses, traveling expenses associations and expenses for services rendered by the Midland Company, the owner of the common stock of the West Ohio Gas Company. (R., 541.) The donations and dues hereinbefore referred to constituted a rather substantial amount each year and the payment for Midland Company services averaged approximately $4450 each year.

It should be readily recognized that the inclusion in

this item of expense of contributions for charitable purposes, donations and the expense of memberships in chamber of commerces and other associations has no proper place in the operating expenses of any public utility. There certainly was no evidence introduced to show that any consideration or benefit was actually received by the company or that the donations were necessary to provide proper gas service at reasonable rates or that they reduced or eliminated expenditures that would otherwise be necessary or that the gas consumers directly or indirectly benefited to any degree by virtue of the gifts, in a way capable of being measured in money. To call such contributions an operating expense is as contrary to common sense as it is detrimental to proper regulation of a public utility. The causes to which these contributions were made were no doubt worthy and donations, especially those which look toward the alleviation of human suffering, are to be commended. However, one is somewhat shocked at the generosity of the utility and its commendable spirit of giving to suffering humanity when the company attempts to recoup its contributions from the consumers through charges to operating expense, which are in turn, assessed directly against the rate payers in a collection of charges high enough to support a net return at a given figure above the amount of the donations or contributions.

Under the uniform classification of accounts for natural gas utilities prescribed by the Public Utilities Commission of Ohio, to which this company must conform, donations are a debit to surplus, and not an item of op-

erating expense. Within the past two years the question whether donations should be charged to surplus or to operation has been thoroughly explored and finally determined by the Interstate Commerce Commission and the New York Public Service Commission, and both these bodies have reached the same conclusion and that is that such items are not properly included in operating expenses. *Re New York Telephone Company,* P. U. R. 1932D, 20 (1932) (New York Public Service Commission); re *New York Telephone Company,* P. U. R. 1933C, 409 (Interstate Commerce Commission), and in rate making proceedings the rule adopted by the overwhelming and virtually unbroken weight of authority is that donations made by utilities are not a charge to operation, cannot be charged to the consumer, and must be borne by the stockholder.

Re *Lone Star Gas Company,* P. U. R. 1932C, 1 (Oklahoma);

Re *Reservations, Contributions and Donations, Interest During Construction and Property Not Used in Operations* (D. C.) P. U. R. 1930D, 113, 114;

Herring v. Clarks Ferry Bridge Company (Pennsylvania) P. U. R. 1926D, 514, 529;

Idaho Power Company v. Thompson, 19 Fed. (2d) 547, P. U. R. 1927D, 388 (Federal);

Re *Citizens Independent Telephone Company* (Indiana) (1929) P. U. R. 1930A, 431;

Rock Port v. Clifton (Missouri) P. U. R. 1927E, 470;

Re *Crystal City Gas Company* (New York) P. U. R. 1925E, 91;

Re *Southern California Edison Company,* P. U. R. 1924C, 1 (California);

Municipal Gas Company v. Wichita Falls (Texas) P. U. R. 1924B, 410;
Re *Idaho Power Company* (Idaho) P. U. R. 1924C, 731;
Railroad Commissioners v. Hughes Electric Company (N. D.) P. U. R. 1925A, 18.

It should, therefore, be apparent that the company has been allowed to include in its operating expenses for each year considerable sums which should not be properly included in operating expenses for rate-making purposes. There was also included in this item, and allowed by the commission, compensation paid to the Midland Company, the parent company of the West Ohio Gas Company, approximating some $4450 a year for the four-year period involved. This compensation was presumably for services rendered to the West Ohio Gas Company by the Midland Company but the court will search the record in vain in an effort to obtain very much light upon the subject of just what these services were and the basis of their justification. (R., 413, et seq, 350, et seq.)

So that as a matter of fact a considerable amount was allowed to the company without question by the commission under the heading of general and miscellaneous expenses which should not have been allowed.

Rate Case Expense.

In addition to the small difference existing between the company and the commission for the item of general and miscellaneous expense by virtue of the method of allocation used by the commission instead of the use of the

method contended for by the company there is a difference in the amount of approximately $5790 per year for rate case expense claimed by the company and amortized over the period of six years. The total amount claimed by the company for this item being $30,607.69. However proper it may have been for the commission to allow this amount in its entirety or in part it cannot properly be raised in this court for the purpose of establishing confiscation. In *New York & Queens Gas Company v. Newton*, 269 Fed., 277, at paragraph 5 of the syllabus was found the following statement:

> "5. Gas—14(1) Expenses of litigation should be excluded in ascertaining whether rate was confiscatory. In a suit to enjoin the enforcement of laws, New York, 1906, c. 125, on the ground the maximum rate of $1.00 was confiscatory, expenses of the injunction suit should be excluded."

The court in its opinion on this subject holding as follows:

> "5 (b) Expenses of litigation—These were also excluded by the master, but were allowed by the court in the Consolidated Gas case. I should follow the decision on this point in the Consolidated Gas case, were it not that I am firm in the conviction that, while this item may properly be considered in fixing a rate, it is not to be included in determining whether the rate is confiscatory. I agree with the master both in this conclusion and his reasons therefor."

And in the case of *Reno Power, Light and Water Company v. Public Service Commission,* 298 Fed., 790, at paragraph 15 of the syllabus is the statement:

> "15. [Gas—14 (1)] Expense hearings not considered in fixing rates. Expense of rate hearings are deemed abnormal, and are not considered in determining whether rates are confiscatory."

In its opinion the court on this subject says:

> "15. $8594.95 is charged as the expense of rate hearings. As such litigation is of rare occurrence, if allowed at all, it should be spread over a series of years; but even this treatment has not been approved by the courts. Such items are deemed to be abnormal, and are not entitled to consideration in determining whether rates are confiscatory."

In the case of the *Columbus Gas & Fuel Company v. City of Columbus,* 17 Fed. (2nd), 630, which was decided by the federal court for the southern district of Ohio, paragraph 12 of the syllabus provides as follows:

> "12. Gas company held not entitled to allowance as part of rate base, of expenses for legal services and for advertising in newspapers in preparation and contemplation of rate base litigation."

At page 640 of the opinion the court said on this subject:

> "The court is able to find no decision, however, where the court has held directly that the legal expense of the utility arising in preparation and prosecution of its claim of unconstitutionality is allowable to directly produce or influence that unconstitutionality. Such would appeal to the court to be unreasonable as well as inequitable."

For a further discussion of this point see *Public Utility Reports Digest,* Volume 2, p. 1553.

Upon the basis of the foregoing authorities which seem to be uniformly recognized, it is, we believe, apparent that the cost of rate case expense which the company had included in general and miscellaneous expenses allocated over a period of five years is not a proper charge to be considered by the court in determining whether or not the rates fixed by the commission in this case are or are not confiscatory.

The commission has made ample allowance for the item of general and miscellaneous expenses. As a matter of fact, when it is considered that it has allowed without question many items which should properly not be included it becomes apparent that its allowance is even generous.

6. State Excise Tax.

The company complains of the fact that the commission did not take into consideration the enactment of the Ohio Legislature in 1932 increasing the excise tax on public utilities from 1.35% to 2.35% of gross revenue. This act became effective April 5, 1932.

The same question was presented to the Supreme Court of Ohio in the case of the *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* 127 O. S., 109. This particular tax was purely an emergency tax which was passed for a period of one year only. It was only in force and effect during the last year of the ordinance

which is here under discussion. While we recognize that a great weight of authority sustains the right of utilities to include in operating expenses all normal taxes, we do not believe such a rule was intended to include a purely emergency tax such as this one obviously was intended to be and it is our belief that the very purpose of this legislative enactment was to cause public utilities to carry at least a small portion of the greatly increased tax load which is now facing every individual. As a matter of fact, there have been times when we have wondered as to the wisdom of the general principle of including all taxes in operating expenses. All normal taxes, including federal income tax, real and personal property taxes, excise taxes and the Public Utilities Commission tax, are included in the operating expenses of each company and recognized and allowed by the commission. In other words, the company really acts only as an agent in collecting these taxes for the various governmental agencies from the consumers themselves through the medium of rates. Regardless of the amount of such taxes rates must be fixed to allow a fair return after their payment in full. The result of this method means that the companies themselves have no real tax burden. In the instant case very little damage, if any, was done to the utility by the failure of the commission to include for the year 1932 the amount contended by the company to have been paid for excise tax which became effective on April 5 of that year, which was the last year of the ordinance period.

7. Retirement Reserve Allowance.

The annual depreciation allowed by appellee is ample and sufficient and exceeds the actual experience of the company for this item.

The appellant contends that the judgment of the court below in affirming the order of the appellee fixing the annual depreciation allowed by appellant was erroneous.

To support this contention appellant recites that the evidence showed that $53,639.00 a year is necessary for appellant's annual depreciation requirements. This evidence is contained in an exhibit introduced by the appellant. (R., 530.) Presumably this evidence is supposed to represent 3% of the total depreciable property. As a matter of fact this was simply another attempt to show a higher operating cost than the appellant actually sustained.

Peculiarly enough the company does not insist strenuously upon the allowance which they claim is absolutely necessary in the amount of $52,539.40 for annual depreciation but devote most of their discussion of this topic to insisting upon an allowance of $35,579.32 (1.5% depreciable property) on the basis of the testimony of the city's witness Allensworth. For the moment they apparently overlook the fact that this same witness has stated that the actual experience of the company's measured in terms of the commission's finding as to reproduction cost was 9/10 of 1% per year with respect to annual depreciation. The company in commenting upon

witness Allensworth's testimony (Appellant's brief, p. 121) says:

> "The principle followed by the city witness on this phase of the case was fundamentally sound."

This sudden tribute to the city engineer is rather startling in view of the company's repeated assertions found throughout the record as to the witness' general incompetency, and its insistence throughout the case that he was not qualified to testify at all as a witness. (R., 473-474.)

The company insisted that it should be allowed 3% of the value of the depreciable property for this item. Witness Allensworth stated that 1.5% of the commission reproduction cost would constitute a proper annual charge for depreciation. (R., 442.)

The record discloses (R., 443) that the actual experience of the company taken from its books indicates that the experience of the company in meeting the expense of depreciation over the 7 year period from 1925 to 1931 was at the rate of 59/100 of 1% of the company's book value of the property. This same experience, measured in terms of the commission's finding as to reproduction cost, was 9/10 of 1% per year. The commission allowed for this item an annual depreciation charge of 1.4% on the depreciable property valued at $1,751,288.60 as of

March 31, 1928. The commission stating with respect to its allowance as follows: (R., 93, 94)

"Depreciation

"The company claims that it should be permitted to set up for annual depreciation charges the sum of $53,639.00.

"The city claims that the sum of $35,579.32 should be allowed as an annual depreciation charge, this sum being 1½ per cent. per annum of the reproduction value of the depreciable property used and useful in Lima.

"Neither amount is satisfactory. In the record of this case, it is said (pages 1169 et seq.) that the actual experience of the company relative to depreciation for the seven-year period 1925 to 1931, was at the rate of 95/100 of 1 per cent. per year of the company's book value of its property and, further, that if the company's experience in regard to book value is applied to this commission's finding as to reproduction cost, 9/10 of 1 per cent. per year would have been set up for depreciation purposes.

"These statements are not refuted by the company.

"Nine-tenths of 1 per cent of the reproduction value of the depreciable property as of March 31, 1928, would be $20,169.08. This would be the amount allowed as an annual depreciation charge under the plan discussed above.

"The commission feels, however, that the annual rate of depreciation should be based upon the then present value of the depreciable property.

"Consequently, there has been allowed an annual depreciation charge amounting to 1.4 per cent. on $1,751,286.60 of property as of March 31, 1928, resulting in an annual depreciation charge of $24,518.04. In view of the evidence in the record of this case relative to depreciation, the amount set up and

allowed herein as an annual depreciation charge is, in our opinion, ample.

"This becomes particularly true when it is realized that the company's maintenance policy undoubtedly provides for many items that would ordinarily be taken care of by depreciation reserve."

The Supreme Court of Ohio affirmed the action of the commission as to this allowance in the following language: *West Ohio Gas Company v. Public Utilities Commission of Ohio,* 128 O. S., 301. (R., 26.)

"The gas company excepts to the allowance by the commission of 1.4 per cent. of the depreciable property as a reasonable amount for depreciation reserve. The gas company contends for 3 per cent.

"We have little trouble with this proposition. This finding was made from seven years experience, 1925 to 1931, inclusive, as shown by the gas company's book value. The fact is that the commission was more liberal in this regard than the book value warranted."

The action of the commission affirmed by the state court is amply supported by additional evidence found in the record for it is disclosed that the company in its operation as a whole had accumulated $327,766.87 as an unexpended balance in depreciation reserve and amortization as of December 31, 1931, (R., 444, 786.) while maintaining its property in 100% condition.

The testimony of the company's witnesses is pertinent in this connection. Company Witness Curtin, the president of the company, testified that the company's plant was 100% efficient and that the physical condition was 100% (R., 167) and that it would not be possible "to

expend economically and sensibly as much as $200,000.00" to make the Lima property better than it now is. (R., 167, 168.) Company Witness Pringle, the company's comptroller, was equally enthusiastic as to the plant's perfect condition, he also being of the opinion that it was 100% efficient. (R., 131.)

When it is considered that the plant, according to testimony of its own witnesses, has been maintained in a 100% condition and is today physically perfect and that it would be impossible to expend as much as $200,000 on the property to improve it we can conceive of no justification for the company's contention that an annual depreciation allowance of 3% is necessary and particularly is this true when the evidence discloses that the actual experience of the company over a seven year period in the meeting of the expense of depreciation has been less than 1% per year, on the basis of which allowance they have accumulated an unexpended balance in depreciation reserve and amortization reserve as of December 31, 1931 in the amount of $327,766.87. (R., 444, 786.)

The decision of this court in *Smith v. Illinois Bell Telephone Company*, 282 U. S., 133; 75 L. Ed., 255, is of interest in this connection. Paragraph 10 of the syllabus provides:

> "10. The allowance for depreciation entering into the ascertainment of the rate base of a public utility may be based on past experience, and should not be continued if shown by past experience to be excessive."

In the recent decision of this court in the case of *Dayton Power and Light Company v. Public Utilities Commission of Ohio*, 292 U. S., 290, 78 L. Ed., 1267, this court approved the action of the Ohio commission in reducing the amount claimed by the company for reserve for depreciation from 4% of depreciable property to 2% of the depreciable property on the basis of the actual experience of the company, and in the case of the *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio*, 292 U. S., 398, 78 L. Ed., 1327, this court held in discussing the allowance made by the commission for the annual depreciation of the company's property, as follows: (p. 414, 1336)

> "The commission determined that in view of the large reserve and the good condition of the plant, the allowance asked for by the company ($174,880.24) was too high, and that $68,196.00 was adequate.
>
> "This is slightly less, it is true, than the amount ($88,695.03) suggested by a witness for the city, but the commission was at liberty to form its own judgment."

As a matter of fact, the allowance of the commission for annual depreciation, consisting of 1.4% of the depreciable property valued at $1,751,288.60 as of March 31, 1928 was not only adequate for this particular item but, in view of the evidence in the record, was exceedingly generous.

8. The Question of Amortizing the Forty-four Mile Transmission Line.

There is not the slightest justification for the inclusion in operating expenses of $22,935.97 a year for the purpose of amortizing a transmission line used to convey natural gas into the city of Lima when it is admitted that the transmission line is used and useful in the company's business and will continue so for an indefinite period in the future.

The fallacy of such a contention becomes even more apparent when it is recognized that the transmission line was included in the valuation of the company's property and its value allocable to Lima was included in the value of the depreciable property on which the annual depreciation charge is allowed even though the expense of maintaining the line is borne by the producing company selling gas to the West Ohio Gas Company.

The company claims $22,135.97 annually as a special amortization allowance for the transmission line extending east from Lima some forty-four miles and used for the purpose of transporting natural gas to the city of Lima. The commission refused the allowance for this item requested by the company.

The sole basis for the company's claim in this connection is predicated upon the fact that in 1924 the then commission had authorized such amortization.

The fact is that such authorization was obtained at a time when the then commission was swayed by the representations of the company to the effect that the natural

gas supply was becoming exhausted and that insufficient reserves had been set up to protect the investment in this line. Even though the authority prayed for in that case was granted the company did not immediately set up amortization for that purpose which was allowed by the order of the commission which had then issued, but when the company found itself again before the commission in this rate proceeding they reasserted their claim to such an allowance. In the meantime, the basis for granting the original order of amortization, that is the belief that the supply of natural gas was becoming exhausted, had disappeared. This fact is recognized by counsel for appellant in its brief at page 11 (appellant's brief, p. 11) when it says:

> "The fact is not shown by the evidence in this case but it is true, as claimed by the commission, that at the present time there are large quantities of natural gas being transported into Ohio."

As a matter of fact, counsel for the company is not quite correct when it says that there was no evidence in the record to show an adequate supply of natural gas available to it for witness Allensworth testified to the effect that the transmission line here under discussion reached an existing adequate supply of natural gas. (R., 198.) Certainly, in view of the facts, their could be not the slightest justification for the allowance of an amortization charge for the purpose of retiring this transmission line, which has an anticipated life almost indefinite as to length and which the company, through witness Curtin, its president, admits is in 100% condition. (R.,

168.) The fallacy of the plaintiff's contention for the allowance of this charge becomes even more apparent when it is considered that the maintenance of this transmission line is borne by the Ohio Fuel Gas Company under and by virtue of the terms of its contract with the West Ohio Gas Company providing for the sale of gas to the West Ohio Gas Company. In addition to that the entire value of the line allocable to Lima is included in the base of $1,751,288.90 fixed by the commission as the value of the depreciable property on which the allowance of 1.4% as an annual depreciation charge was computed.

So that the net result of the company's contention is that because the commission in 1924 authorized it to amortize its transmission line because of the then existing belief that the supply of natural gas was almost exhausted, a belief that has long since been exploded, that it should now be allowed to include in its operating expenses for the purpose of justifying its rates the amortization charge originally authorized by the commission and which it failed to make at that time and that contention is advanced in spite of the fact that it is admitted that the transmission line is now used and useful, is in almost perfect condition, has an indefinite future life, is maintained by another company, and the value of the line is included in the base upon which their annual depreciation is allowed. The argument of the company in this connection simply illustrates the length to which the company is willing to go in an attempt to justify a very high price for a comparatively poor grade of gas. The

finding of the commission which was affirmed by the court is well stated in the commission's opinion (Commission Opinion, R. 94, 95) in the following language:

"Amortization

"The company claims that by virtue of an order issued by this commission in Case No. 179, decided 1924, it should be permitted to amortize the pipe line running from Kenton and other points to and beyond the city of Lima at the rate of $23,416.00 per year.

"This pipe line has been in use for more than thirty years. It is of wrought iron, with a very long life.

"When the order referred to was issued by this commission, there was every reason to believe that the natural gas supply going into this transmission line would soon exhaust itself. Such a development would have eliminated much of the usefulness of the transmission line, and it was only fair and reasonable that some provision should have been made at that time for the amortization of that line.

"As indicated above, the subsequent developments in the gas industry in this state and elsewhere, have proven beyond reasonable doubt that there is now available an adequate supply of natural gas."

"This amortization charge is therefore eliminated in this case. There is no cause to fear or expect a shortage of natural gas, and the mere fact that conditions at one time warranted a provision for such amortization is not sufficient to cause this commission to now sanction such a charge."

We submit, therefore, that the action of the commission in refusing to allow the amount claimed by the company relative to this item was not only reasonable but that any other action on the part of the commission would have been entirely improper.

III.

THE RATE OF RETURN.

A rate of return approximating 6% for the period 1928-1931 inclusive upon a valuation base as of March 31, 1928, of a property with a physical capacity far in excess of the needs of the community served is a fair and adequate rate of return and is in no event confiscatory. In fact in light of the circumstances presented, a lower rate of return would be justifiable.

Upon the basis of the valuation and operating expenses as allowed by appellee, the appellant's rate of return was slightly less than 6%. Appellant insists that a return of at least 8% is necessary if confiscation of its property is to be avoided. (Appellant's brief, page 148.)

There are but few instances in this case where we find ourselves in accord with counsel for the company, but we are inclined to agree whole-heartedly with them when referring to the decision of this court in the case of *Smith v. Illinois Bell Telephone Company*, 282 U. S., 133, they state, at page 148 of their brief (Appellant's Brief, page 148), "The final decision reasserts the sound fundamental that in a confiscation case rate of return is not a matter to be decided by a blind application of a percentage, but by a study of the situation of the company whose rates are under attack." Of course this statement is but a recognition of the principle laid down by this court in *Bluefield Waterworks and Improvement Company v. Public Service Commission*, 262 U. S., 679, 67 L. Ed.,

1176, wherein it was said: "What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment having regard to all relevant facts."

It is upon the basis of the circumstances of this case that we assert that a rate of return of approximately 6% is adequate and non-confiscatory and that a lower rate of return could in all propriety be sustained.

It must be remembered that the West Ohio Gas Company, insofar as its furnishing gas in Lima is concerned, consists of a combination of two former companies, both of which furnished gas to Lima prior to 1924. (R., 149, 206, 207.) The one company being equipped to furnish an artificial gas, having a complete distributing system and a manufacturing plant for that purpose, and the other company being equipped for furnishing natural gas, owning a distribution system and a transmission line through which gas could be brought to Lima. (R., 146, 229, 239, 245.) With the organization of the West Ohio Gas Company, these properties were combined (R., 215) and we believe the evidence is indisputable to the effect that they represent a gas producing capacity far in excess of the needs of the community which they serve. (R., 201, 204, 205, 206, 248, 249, 265, 292, 301, 427, 428.)

As a matter of fact the evidence is that either the artificial plant or the natural gas facilities is adequate to supply the needs of Lima (R., 198, 409, 204, 205, 206, 248, 249, 292, 427) and in view of the comparatively poor grade of gas which is produced by the present company

through a mixing process, and in view of the further fact that the transmission line extending east of Lima, is connected with an adequate supply of natural gas and has an ample capacity to supply Lima with natural gas, there would have been every justification, had the commission so desired, for excluding the manufacturing plant from the rate base. In *Los Angeles Gas and Electric Corporation v. Railroad Commission of the State of California*, 289 U. S., 287, this court held in paragraph 12 of the syllabus:

> "A plant for manufacturing gas, which by reason of the fact that an abundant and constant supply of natural gas has become available, is no longer required, is improperly included without deduction for disuse in estimating the reproduction cost of a gas company's property."

The only evidence of any deduction at all for the over-capacity of this plant was contained in the testimony of Witness Dabe (R., 301) to the effect that a deduction of 15% had been made. The negligible effect of this deduction will be recognized when the general testimony of over-capacity is considered to the effect that the excess capacity of the manufacturing plant alone ranged any place from 50% (R., 248) to 100% (R., 204) more than the requirements of the city of Lima and this without respect to the fact that the transmission line for the purpose of providing natural gas is sufficient to supply twice the requirements of Lima (R., 427) without the manufacturing plant being included at all. Yet the company insists that upon a valuation base including *both*

the manufacturing plant with its excess capacity and the natural gas transmission line and distributing system with its excess capacity, they must have a return of at least 8% to avoid confiscation. Little consideration apparently is given by the company to the gas consumers of Lima, who are paying an excessively high rate for gas of an inferior quality, and a rate much higher than is being collected in other communities similarly situated. (R., 273.) As a matter of fact a rate which averages $1.29 for the first M c. f. for a mixed gas, which has only slightly more than 50% of the heating content of natural gas, is even more prohibitive than at first appears, for the gas consumer is compelled to buy a greater quantity of gas to get the same heating content.

It will be conceded, we believe, that the cost of manufacturing the mixed gas produced by the plaintiff is apimately 36¢ per M c. f. We believe it will likewise be recognized that the average rate for the first M c. f. of gas consumed is $1.29 and that the expense of distribution, including return on investment, is 93¢. When this distribution expense is compared to the distribution expense of 16¢ plus per M c. f. approved by this court in the case of the *Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio,* 292 U. S., 398, 78 L. Ed., 1327, and with a distribution expense of less than 20¢ per M c. f. approved by this court in the case of *Dayton Power and Light Company v. Public Utilities Commission of Ohio,* 292 U. S., 290, 78 L. Ed., 1267, the question naturally arises as to why it should cost five times as much

to distribute gas in Lima, Ohio, as it costs to distribute gas in such communities as Columbus, North Hampton, Piqua, Sidney, South Charleston, Tippecanoe City, Washington C. H. and Wilberforce, Ohio. At least one solution to the problem immediately presents itself and that is that the cost of gas in Lima is so prohibitive as to prevent consumption, and as a result the distribution costs are higher per person than they would be were there more consumers.

At least one of the company's counsel recognized this fact when he made the following statement in the hearings before the commission: (R., 407.)

> Mr. Marshall: "Well I am not going to make any bones about it. I always stated to them in all this litigation that I thought their rate was going to be prohibitive. I think it is proved now that it was. That was the history of it. They had the gas business and we couldn't do anything else."

These are circumstances which certainly should be recognized in determining what constitutes a fair rate of return, for as early as 1898 this court held, in the case of *Smyth v. Ames,* 169 U. S., 464, 42 L. Ed., 819, 18 Supreme Court, 418, that: "Railroad rates should be fixed with reference to the fair value of the property used and services rendered and not merely to pay expenses, interest and dividends, nor in order to realize profits upon an excessive valuation or a fictitious capitalization," and "the public have a right to be exempt from unreasonable exactions and the interest of the corporation is not the sole test of suitable rates."

And in *Whitten and Wilcox, Valuation of Public Service Corporations*, Second Edition, 1928, Vol. 1, Sec. 60, page 77, is found the following:

> "A public utility is entitled to charge rates that will yield a reasonable return upon a 'fair value' of the property devoted to public service *provided such a return can be earned by rates which are reasonable from the viewpoint of the worth of the service.*" (Italics ours.)

In further support of this proposition see

Re *Los Angeles Gas & Electric Corporation*, P. U. R., 1917F, 717;
Re Coast Counties Gas & Electric Co., P. U. R., 1924C, 415;
In Benicia v. Benicia Water Co., (1923) 23 Cal. R. C. R., 213;
Re Colorado Springs Light, Heat & Power Co., P. U. R., 1916E, 650;
Belleville v. St. Clair County Gas & E. Co., P. U. R., 1915F, 235; P. U. R., 1916B, 24;
Re Central Illinois Public Service Company, P. U. R., 1919E, 910;
Re Illinois Gas Company, P. U. R., 1921B, 430;
In Re Kampsville Electric Light & Power Co., (1921) 1 Ill. C. C. R., 51;
Re Indiana Fuel & Light Company, P. U. R., 1921E, 381;
Re Castine Water Company, P. U. R., 1924B, 529;
Re United R. & Electric Co., P. U. R., 1928C, 604;
Donham v. Public Service Commission, P. U. R., 1919C, 880, 232 Mass., 309, 122 N. E., 397;
Re Citizens Telephone Company, P. U. R., 1931C, 162;
Re Nashville R. & Light Co., P. U. R., 1929A, 664;
Department of Public Works ex rel. Friday Harbor v. Friday Harbor Light & P. Co., P. U. R., 1928E, 660;

Re Wisconsin Traction, Light, Heat & P. Co., P. U. R., 1919B, 224;
Re Interstate Light & P. Co., P. U. R., 1921E, 161;
Re Duluth Street R. Co., P. U. R., 1928B, 228;
Re Milwaukee Electric R. & Light Co., P. U. R., 1930C, 426;
Re Community Teleph. Co., P. U. R., 1931C, 285.

Another circumstance that must be considered in reaching a determination as to what would constitute a fair rate of return to appellant is found in the fact that the fair valuation of appellant's property was made on the basis of prices existing as of March 31, 1928. The ordinance was for the five-year period following. Certainly it will be recognized that the real value of appellant's property has been less in each succeeding year of the period. The record discloses that the extent of the decline during the ordinance period in prices of items making up the valuation of the company's property was as great as 25%. (R., 478, 511, 512.) Even the witness produced by the company reluctantly admitted a decline in the price level affecting the valuation. (R., 490.)

But in spite of all these factors, counsel for the company doggedly insist that any return less than 8% will result in confiscation of the company's property. Perhaps the appellant does not realize that during the past few years profound economic changes have taken place and that a 5% return now has about the same purchasing power as an 8% return formerly possessed. In *Los Angeles Gas and Electric Corporation v. Railroad Commission, supra,* is found the following statement:

"But we know that the estimates of present value, taken as the cost of reproduction as of December 31,

> 1929, based upon average prices from 1926 or 1927 to 1929, furnished no dependable criterion of values in the succeeding years. The country was facing a most serious decline in prices. It was entering upon a period of such depression as to constitute 'a new experience to the present generation.' It was not the usual case of possible fluctuating conditions but of a changed economic level. *Atchison, T. & S. F. R. Co. v. United States,* (1932) 284 U. S., 248, 260, 262, 76 L. Ed., 273, 52 S. Ct., 146. * * *"

In the even more recent decision of this court in *Dayton Power and Light Company v. Public Utilities Commission of Ohio, supra,* the twenty-fourth paragraph of the syllabus held as follows:

> "24. The Supreme Court of the United States takes judicial notice of business conditions."

In carrying out the mandate of this court in *Smith v. Illinois Bell Telephone Company,* 282 U. S., 133, 75 L. Ed., 255, the lower federal court in Illinois took "judicial notice relative to the general decline in corporate earnings during the years 1931 and 1932," and held that 6½% was a proper rate of return for 1931 and 5% a proper rate of return for 1932. *Illinois Bell Telephone Company v. Gilbert,* 3 Fed. Supp., 595 (1933).

Courts and commissions generally have recognized that during a financial depression of unparalleled proportions, utilities are not entitled to a rate of return equal to that which might be proper in more prosperous times. See *Re Yonkers Railroad,* P. U. R., 1933B, 61 (1932) (New York Public Service Commission); *Re Kentucky-Tennessee L. & P. Company,* P. U. R., 1932E,

386, 392 (Tenn.); *In Re Chesapeake & Potomac Telephone Co.*, P. U. R., 1933E, 193 (P. U. C. of D. C.); *In Re Northwestern Electric Company*, P. U. R., 1933A, 493 (1932) (Oregon Commission); *In Re West Coast Tel. Co.*, P. U. R., 1933A, 487 (1932) (Washington Department of Public Works); *Re Lone Star Gas Company*, P. U. R., 1933C, 1 (Oklahoma Commission); *City of Charleston v. Public Service Commission*, P. U. R., 1931E, 74 (1931) (West Va. Supreme Court of Appeals); *Kankakee Water Co. v. Gilbert*, P. U. R., 1933B, 145 (1933) (U. S. D. C. E. D. Illinois); *Ohio Associated Telephone Co. v. Frank W. Geiger*, 3 Fed. Supp., 997, P. U. R., 1933E, 491 (1933). This is really but a recognition of the fact that a fair rate of return varies with periods of time and economic cycles.

In recognition of this change in business conditions generally, a three judge federal court, sustaining a decision of the Ohio commission, has said in *Ohio Associated Telephone Co. v. Frank W. Geiger*, 3 Fed. Supp., 997, P. U. R., 1933E, 491 (1933), at page 999 (Fed. Supp.):

> "Still other decisions of the federal courts have approved rates of return well under 6%. A statutory district court recently held that under existing generally depressed industrial and financial conditions there is no warrant in finding that a probable return of 5.17% is confiscatory. *Kankakee Water Company v. Gilbert*, U. S. District Court, Eastern Division of Illinois (January 6, 1933)."

Ever since *Bluefield Water Works Company v. Public Service Commission of West Virginia*, 262 U. S., 679, 692 (1922), it has been the law that:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures."

While they represent merely an application of the long settled law that a fair rate of return varies with periods of time and economic cycles as well as with sections of the country and other factors, the recent decisions of the Supreme Court of the United States well illustrate the fact that the necessary and proper result of the application of the law is to reduce the fair rate of return for utilities in times of economic depression such as has prevailed throughout the life of the ordinance under consideration.

Los Angeles Gas and Electric Company v. Public Service Commission, 289 U. S., 287, 319 (1933);
Wabash Valley Electric Company v. Young, 287 U. S., 488-501 (1933);
Smith v. Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255 (1930);
Dayton Power and Light Company v. Public Utilities Commission of Ohio, 292 U. S., 290, 78 L. Ed., 1267 (1934);
Columbus Gas and Fuel Company v. Public Utilities Commission of Ohio, 292 U. S., 398, 78 L. Ed., 1327 (1934).

And yet in spite of all these facts appellant insists upon an 8% rate of return upon a valuation made on the basis of 1928 prices of a property whose capacity far exceeds the needs of the community it serves.

In the last analysis the thesis of appellant's argument on the subject of rate of return seems to rest in the cost that it has allegedly experienced in obtaining funds. We have previously pointed out in this brief that on the organization of the appellant in 1924 it issued $750,000 in preferred stocks, $1,626,381 in common stocks and $1,000,000 in bonds (R., 396, 398) and that the preferred stock and common stock was sold to or acquired by Midland Utilities Company of Chicago, the parent company of appellant. If the cost of marketing these securities was high the appellant's parent company would seem to be responsible. (R., 513.) As a matter of fact, the company issued securities totaling $3,376,000 on a finding of value of only $3,126,000. (R., 405.) Appellant comments at length upon the fact that its securities were issued upon a finding of value made by the commission. In that connection the following testimony is both interesting and illuminating (R., 406):

> "Commissioner Bricker: If you over capitalize your property do you think this commission ought to take it into consideration in the amount of the rate, would that be a loss to the rate payer?
>
> "Mr. Hebel: The capitalization of this company was passed upon by this commission—
>
> "Commissioner Bricker: Upon application of the company.
>
> "Mr. Hebel: Yes.

"Commissioner Bricker: And upon its own appraisal.

"Mr. Hebel: On whatever evidence was submitted. I don't know what evidence was before the commission. My understanding was that the commission had its engineers make an appraisal of the property at that time."

The statement of the commission at the close of its opinion in commenting on this subject is also of interest. The commission says: (R., 98, 122.)

"The company, in its case, claims that it has not been earning a fair return upon its property; that it has not been earning enough to set aside proper amounts for depreciation and amortization and, in general, the company sought to leave the impression that it was ekeing out a bare corporate living. These contentions lose much of their weight in the eyes of this commission when it is noted in the annual reports of this company that dividends on all classes of stock have been paid during the period involved; that fixed charges have been promptly met; that additions and betterments have been made to the property; that salaries, particularly of administrative officers, have not suffered greatly during the business depression.

It is not the province nor the aim of this commission to manage the West Ohio Gas Company, but it is felt that expenses of the company have not been reduced in line with the trend of the times.

It is the further feeling of this commission that the rate established herein is fair to both customers and company in view of the record of this case."

The fallacy of the contentions of the appellant are so apparent that further argument should not be necessary.

We submit that a rate of return of approximately 6% under the circumstances of this case is not only non-confiscatory but is generous and that as a matter of fact a lower rate of return could properly be sustained. It should be remembered further that the rate of return has been computed upon the basis of gross sales of gas resulting under the company's prohibitive schedule of rates which have been continued in effect throughout this litigation. In other words, the company has never had any experience under the rates ordered by the commission and if the economic law of increased sales resulting from lower prices is applicable, and we submit that it is, then the return to the company resulting from increased consumption would be materially increased.

IV.

THE ANNUAL REPORTS FOR THE YEARS 1928-1931, INCLUSIVE, FILED WITH THE COMMISSION BY THE COMPANY PURSUANT TO THE PROVISIONS OF THE OHIO STATUTES AND PUT IN EVIDENCE AS COMMISSION EXHIBITS 1, 2, 3 AND 4 BY THE ORDER OF THE COMMISSION ON ITS OWN MOTION.

On the eighth day of March, 1933, the commission made the following order: (R., 85.)

"Before the Public Utilities Commission of Ohio.

No. 5137.

(Title omitted.)

Order Placing Annual Reports in Evidence.

Upon the commission's own motion and for the purpose of completing the record herein, it is

Ordered, That the annual reports filed with this commission by the West Ohio Gas Company for the years 1928, 1929, 1930 and 1931 be, and hereby they are introduced in evidence and made a part of the record herein as Commission Exhibits 1, 2, 3 and 4.

The Public Utilities Commission of Ohio,

E. J. Hopple, Chairman; Frank W. Geiger, Charles F. Schaber, Commissioners.

Dated at Columbus, Ohio, this eighth day of March, 1933."

The company now contends that the use of any information contained in its annual reports placed in evidence by the foregoing order of the commission renders the entire rate order void.

These reports, (R., 636-816) duly verified by the president and secretary of the company, were filed with the commission in accordance with the provisions of Section 614-48 of the Ohio General Code.

No question as to the correctness of the information contained in these reports is raised by the company nor does it contend that the data contained therein would not constitute proper evidence in the case. (Appellant's brief, p. 56.)

We are likewise unable to find in appellant's brief any statement as to the exact use of such reports that was made by the commission or how the appellant was prejudiced thereby.

To support its contention appellant cites numerous cases where orders were made upon the basis of evidence *not introduced in the record.* Appellant does not challenge the fact, however, that here the reports were placed in the record by an order of the commission formally entered and that pursuant to the provisions of the Ohio statutes (G. C., 499-15) the commission was authorized to resort to the information contained therein.

The complaint of the appellant rests then not in the fact that these annual reports were not put in evidence for it admits that they were (appellant's brief, p. 57) but upon the fact that they were made a part of the record after the formal hearings had been completed.

The company does not challenge the authenticity of the information contained in these reports nor do they contend that any use of that information was prejudicial to them yet appellant naively suggests that it is not seeking

to advance any point of mere technicality. (Appellant's brief, p. 69.) No, it simply desires that a rate order made after years of hearings and delay, with great expense to the company, the city of Lima and the commission, be declared void because it disapproves of the method by which its annual reports were introduced into the record of this case without alleging in any particular how the information contained therein was used by the commission or that it was prejudiced thereby.

The appellant does not claim any injury from the introduction of any of the annual reports in evidence by the commission. It simply objects conditionally to the method of their introduction.

In *Snyder v. Massachusetts,* 291 U. S., 97, 78 L. Ed., 674, at p. 116-117, this court speaking through Mr. Justice Cardozo made the following statement:

> "Due process of law requires that the proceedings shall be fair, but fairness is a relative not an absolute concept. It is fairness with reference to particular conditions or particular results."

and in this same case Mr. Justice Roberts in the dissenting opinion (291 U. S., 127) says:

> "The concept of due process is not technical. Form is disregarded if substantial rights are preserved."

Certainly appellant does not insist that the introduction in evidence of this case of its annual reports, the content of which it does not challenge, impairs any of its substantial rights or violates the due process clause of the constitution.

A conclusive answer to appellant's contention is found in its application for a rehearing before the commission, par. 41 of which is as follows: (R., 109-110.)

> "41. Since the termination of hearings, and the closing of testimony, in this cause, the commission has, under date of March 8, 1933, on its own motion ordered that the annual reports filed by petitioner with the commission for the years 1928, 1929, 1930 and 1931 be made a part of the record in this cause as Commission Exhibits 1, 2, 3 and 4. Petitioner objects to such arbitrary placing of said reports in evidence as a part of the record in this case, unless there is also made a part of said record and placed in evidence by the commission the annual report filed with this commission by petitioner for the year 1932. Said 1932 report of petitioner was filed with the commission on or about March 1, 1933, and was on file with the commission at the time it entered its said order of March 8, 1933, above referred to."

It will be observed that in its petition for rehearing before the commission the sole basis of its objection to the inclusion of its annual reports in the record was because the report for 1932 was not included. The 1932 report was not used because the commission finding had been prepared on the basis of the four years 1928-1931, inclusive, and the 1932 information was not available when this preparation was in process and did not become available until ten days before the finding of the commission issued, and yet the only objection which appellant raises in its application for a rehearing to the inclusion of the annual reports in the record is predicated upon the failure of the commission to include the 1932 report and not upon the fact that any information con-

tained in the other reports was not correct or proper or that they desired to challenge any of the information therein contained.

The appellant's petition for a rehearing filed with the commission (R., 100-110) does not allege that the annual reports were not introduced in evidence. It does not allege that it was injured or prejudiced thereby. It does not attack any of the information contained in the reports. It does not seek to challenge any of the information contained in the reports, and it objects to their introduction solely because the report for 1932 was not included.

Under the Ohio statutes, (General Code, 543) it is provided that

> "• • • No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless such corporation or person shall have made, before the effective date of said order or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said decision or order to be unreasonable or unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in said application. • • •"

The appellant in its application for a rehearing before the commission did not urge that the annual reports had not been placed in evidence but, on the contrary, admitted that "the commission has, under dates of March 8, 1933, on its own motion, ordered that the annual reports filed by petitioner with the commission for the years

1928, 1929, 1930 and 1931 be made a part of the record in this cause as Commission Exhibits 1, 2, 3, and 4" and requested only that the report for 1932 also be included (R., 109), but when it filed its application for a rehearing in the state court it then for the first time alleged that the reports were not properly in evidence. (R., 37.)

It is apparent that the citations of appellant are not applicable to the facts here presented and that its contention that the rate order is void is untenable.

V.

VARIOUS OTHER CONTENTIONS ADVANCED BY APPELLANT.

1. The Contention that the Court Erred in Not Finding that the Validity of the Rate Order Must Be Determined by its Effect on Net Earnings from Year to Year; and that the Rate Order and the Order to Refund were Invalid Because this Requirement had Not Been Complied With.

The appellant in its discussion of this topic seems to lose entire sight of the fact that the rate under consideration in this case is an ordinance rate covering a five year period and that the question before the commission was whether or not this ordinance rate would produce during the period a reasonable rate of return to the company upon the basis of the fair valuation of its property. The commission in its finding determined that upon the basis of the valuation of the company's property as of

March 31, 1928 the ordinance rate would not be sufficient to produce such a fair return. It, therefore, substituted for the ordinance rate, pursuant to the authority granted to it so to do by the Ohio statutes (G. C. 614-46), a schedule of rates which, in the opinion of the commission, would, for the entire period of the ordinance, yield the company a fair and reasonable return upon the valuation of its property as of March 31, 1928. (Commission Order, p. 1, R., 86.) At the time the commission order was made the ordinance period involved had practically expired and the finding of the commission was based upon an allowance to the company of a rate sufficient to produce a fair return to the company over the entire ordinance period. That such a result was accomplished is illustrated by the fact that the return to the company upon a valuation made in 1928, and upon the basis of prices then existing, would for the succeeding four years of the ordinance for which the commission had complete figures available at the time it rendered its opinion, have yielded to the company an average return of not less than 5.75%, and that for the particular years involved it would have earned during the year 1928, upon the basis of the commission's rates, a return of 6.37%, and in the year 1929 a return of 5.78%, and for the year 1930 a return of 5.88%, and for the year 1931 a return of 4.99%. The company contends very strenuously that the commission did not take into consideration general economic conditions subsequent to 1931 which they argue had reduced the revenues for 1932 below that of previous years. It is rather interesting to find the company in-

sisting upon a recognition of economic conditions as reducing their revenue while at the same time they are insisting that the valuation made during a period of very high prices shall continue undisturbed and that they shall continue to earn a pre-depression return upon the basis of a high valuation.

In this connection we should like to refer to what, to us, appears to be a rather strong admission on the part of the appellant, in the light of its contentions throughout this case, which will be found at page 53 of the appellant's brief. (Appellant's brief, p. 53.) This statement is as follows:

> "When these clearly demonstrated errors of the accountants are corrected, and rate case expense is taken into account and spread over the ordinance period, the return earned by the company under the commission rates (even after eliminating for each annual period the more than $71,500.00 of operating expense that were excluded by the commission) would average less than 5½% for the first four years of the ordinance period, and but about 5¼% for the whole ordinance period."

In other words, the company admits that for the entire five year period of the ordinance and including an allowance for rate case expense in its operating expenses it has earned a return of 5¼% upon a valuation of its plant at a price level existing on March 31, 1928.

2. The Contention that the State Supreme Court Erred in Not Holding that the Rate Order Is Invalid Because the Commission Refused to Grant the Company a Rehearing, Suitably Requested.

The company's appeal from the ordinance passed by the city of Lima on March 19, 1928 was before the Public Utilities Commission of Ohio for a period of more than four years. When the decision of the commission was finally made four years of the ordinance period had elapsed and the commission was in possession of almost complete information as to the experience of the company for the entire ordinance period. Much of the complaint that is directed against administrative commissions in rate proceedings is because of the delay in the making of a decision. After this decision of the commission was finally reached the company then insisted that a rehearing should be granted for the purpose of introducing certain evidence as to its experience in the fifth year of the ordinance period which, they admit, was not available to the commission at the time of its decision. To have granted this rehearing upon the basis of this contention alone would have been to further delay the matter without any sufficient reason being shown therefor. While the company contends that there was a considerable falling off in its revenues in 1932 its annual report on file with the commission, and a public document, does not sustain that contention and the company itself in its statement in its brief at page 53 (appellant's brief, p. 53) admits that if the 1932 experience of the

company had been included it would have reduced the rate of return for the entire period less than ¼ of 1%.

It should be perfectly obvious that if the commission had reached a decision at the end of the first year of the period of the ordinance that a rehearing could not be granted to the company merely because the remaining four years of the ordinance period had not yet elapsed and it wanted to show its experience under the succeeding four years and that that was a sufficient basis for the granting of a rehearing. As a matter of fact the commission delayed more than a reasonable time in reaching a decision, as it was, and to have granted a rehearing would merely have extended this delay a longer period of time without sufficient justification.

3. The Contention that the State Supreme Court Did Not Make that Independent Judicial Review of the Law and the Facts Which Due Process and Equal Protection of the Laws Require.

This contention seems to be a part of the recognized formula followed by all utilities when appeal is taken to this court. It was urged in the case of the *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio, supra,* and in the case of *The Dayton Power & Light Company v. Public Utilities Commission of Ohio,* supra.

In this particular case the Supreme Court of Ohio (*West Ohio Gas Company v. Public Utilities Commission of Ohio,* 128 O. S., 301) (R., 14-35) gave a very careful consideration to all of the problems presented. The

decision of the court is quite voluminous and shows a careful review of the record. To insist that the Supreme Court of Ohio did not make an independent judicial review of the facts is entirely without foundation.

In passing upon a similar contention raised in the case of the *Columbus Gas & Fuel Company v. Public Utilities Commission of Ohio,* supra, this court in paragraph 6 of the syllabus held as follows:

> "6. The Supreme Court of the United States, in reviewing a decision of a state court, will presume that testimony in the record was given due consideration."

The holding of this court in that very recent case (1934), we believe effectively disposes of this particular contention of the appellant.

CONCLUSION.

When it is recognized that the appellant would have earned under the rates prescribed by the commission during the first four years (1928-1931, inclusive) of the five year ordinance period for which complete data was available to the appellee at the time it prepared its opinion, an average annual rate of return of not less than 5.75% upon a valuation as of March 31, 1928, at 1928 prices on a property far in excess of the needs of the city of Lima, it is apparent that it has earned a rate of return that is not only non-confiscatory but is exceedingly fair. When it is recognized further that it has been able to maintain its property in almost perfect

condition, in addition to earning an average rate of return of 5.75% upon a 1928 valuation, we believe that it is apparent that the company has fared as well if not better than other businesses similarly situated during a period of profound economic depression.

The judgment of the court below should be affirmed.

Respectfully submitted,

JOHN W. BRICKER,
Attorney General of Ohio,
DONALD C. POWER,
Assistant Attorney General of Ohio,
Counsel for Appellee, the Public Utilities Commission of Ohio,
Columbus, Ohio, December 1, 1934.

APPENDIX A.

Explanations of Differences.

The company has devoted thirty-two pages of its brief, under its Appendix A, to the quotation of excerpts from various briefs previously filed in the state court, setting forth differences that arose from time to time between sundry amounts as calculated by the commission and as calculated by the company. All of these differences, except those objected to in the company's supplemental reply brief, have been adjusted and all argument in respect to the manner in which such disputed calculations were made has been closed. In most instances the commission acceeded to the company's viewpoints, admitting and correcting errors where they existed and waiving minor technicalities, and in other instances the company recognized the correctness of the commission's figures and methods, after voluminous objections and arguments. The commission deems it unnecessary to make detailed comment on the surplussage of data presented in the Company's Appendix "A", all of which resolves itself into the following differences, not heretofore composed.

At page 186A of its brief the company shows net income computed by the commission	$112,412
At page 183A of its brief the company shows net income computed accordng to its interpretation of the commission's methods	103,624
Entire net difference in Company's Appendix "A" not heretofore reconciled	$8,788

The above difference consists of three items, as follows:

1.	Fractional difference due to dropping cents	$ 1
2.	Cost of gas sold in Lima reduced by commission	2,997
3.	Rate case expense disallowed by commission	5,790
	Total difference	$8,788

In explanation of these items, the commission offers the following:

1. This fractional difference of $1.00 is of no consequence and is conceded by the commission. In eliminating cents to show results in even dollars, the company treated commercial expenses of $19,986.75 as $19,986 instead of $19,987 on page 183A of its brief.

2. This difference of $2997 in cost of gas sold has been checked and, while the commission can not concur exactly with the company's figure of $143,578, it concedes that it is more correct than the amount of $146,575 used by the commission for cost of gas sold in Lima. The effect of this difference is sixteen hundredths of one per cent on the average rate of return, and subject to comments which will follow, concerning Exhibit "B" attached, the commission waives this item in favor of the company.

3. This difference of $5790 in rate case expense is the entire amount claimed by the company which the commission disallows as an improper item to consider in the determination of a rate of return, which may or may not justify the disputed rates in respect to which the expense in question was incurred. The commission considers this treatment particularly justified where confiscation is the issue.

The attached Exhibit "A" has been prepared to show the final results of using figures of undisputed amount as computed by the commission and the company and it will be noted that these figures produce an average net rate of return of 5.75% for the period. It will further be noted that if consideration is given to items of forfeited discounts and the corrected computation of gas sold shown by Exhibit "B" attached, the average net rate of return will be 5.92% for the period. The only difference in the figures, entering into the net income on line 16 of the attached Exhibit "A", as computed by the commission and the company is the rate case expense of $5790 heretofore discussed.

In checking the cost of gas sold, the commission found that the amount of $146,575 included by the company on page 183A of its brief, was originally computed by the commission's accountant in connection with gas sales of $428,509 representing 390,369,625 cu. ft. of gas sold. This cost of gas sold, therefore amounted to 37.55¢ per M c. f. including leakage, on the cubic feet involved. Later, the commission accepted the company's correction of the sales and cubic feet sold in the amounts of $416,225 and 382,294,775 cu. ft. respectively. It appeared obvious from the data at hand that this reduction in cubic feet should cause a reduction in the cost of gas sold as well as in the revenues derived from the sale thereof and computations were accordingly made at 37.55¢ per M c. f. on the corrected 382,294,775 cu. ft. to produce a corrected cost of gas sold of $143,578. It now appears that there was some slip in the original calculations caused, as the company

claims, by misinterpreting data presented in its Exhibits No. 104 and 105, the ambiguity of which is admitted by the company at page 178 of its brief.

In an effort to ascertain the true cost of gas sold based upon figures presented by the company and apparently intended for use in the form presented, the attached Exhibit "B" has been prepared showing an average cost of $145,652 for the period. Effect to these figures has been given under Note "f" on Exhibit "A".

EXHIBIT A.

	Calculations Made or Accepted by Commission					Company's	Calculations
	Year 1928	Year 1929	Year 1930	Year 1931	Average 4 Years	Page Co. Brief	Average 4 Years
Quantity							
1. M c. f. of gas sold in Lima	395,423.3	399,309.5	380,297.5	354,148.8	382,294.8	a 179A ave.	382,294.8
Revenues							
e 2. Gross revenues from gas service in Lima under commission's rates	$432,097	$434,876	$412,995	$384,981	$416,225	183A	$416,225
Expenses							
3. Cost of gas sold	145,004	153,448	149,143	138,704	146,575	a 170B	146,575
4. Distribution expense	36,265	35,151	31,643	34,651	34,428	183A	34,428
5. Commercial expense	20,567	19,363	19,240	19,707	19,719	183A	19,719
6. New business expense	5,000	5,000	5,000	5,000	5,000	a 170B	5,000
7. General and miscellaneous expense	37,854	45,974	40,237	32,877	39,235	183A	39,235
8. Indirect charges to construction—Cr.	(1,827)	(2,588)	(8,400)	(2,401)	(3,804)	a 170B	(3,804)
9. Depreciation	24,518	24,518	24,518	24,518	24,518	a 170B	24,518
10. Real and personal property taxes	23,353	24,889	23,121	19,826	22,797	a 170B	22,797
11. Ohio excise tax	7,034	7,382	7,259	6,782	7,114	a 170B	7,114
12. P. U. C. O. tax	286	282	265	280	279	a 170B	279
13. Income tax	10,144	8,867	6,878	8,127	8,504	a 170B	8,504
14. Uncollectible accounts	2,768	2,753	2,228	2,034	2,446	a 170B	2,446
15. Total expenses	$310,966	$325,039	$301,132	$290,105	$306,811	b	$306,811
Net Income							
f 16. Net income, line 2 less line 15	$121,131	$109,837	$111,863	$94,826	$109,414	c	$109,414
Rate of Return							
f 17. Based upon commission's valuation of $1,901,696 as of March 31, 1928, and the net income shown on line 16	6.37%	5.78%	5.88%	4.99%	5.75%	d	5.75%

Note:

a. These items make up the amount of $213,429, shown in company's table on page 183A of its brief.

b. Company's brief, page 183A, shows total expenses of $312,601 which includes rate case expense of $5790 disallowed by the commission.

c. Company's brief, page 183A, shows net income of $103,624 after deduction for rate case expense of $5790 disallowed by the commission.

d. Company's brief, page 183A, shows rate of return of 5.45% which is .30% less than shown by the commission due to deduction of rate case expense.

e. In its Exhibit No. 104 the company shows revenue from forfeited discounts of $4598.54 during 1930 and $4213.11 during 1931 per transcript pages 534 and 535. The commission's rates shown on transcript page 86 also provide for a penalty of 5¢ per M c. f. for non-payment of bills within ten days. No consideration whatever has been given in the above rate study to revenues from these sources although they would doubtless influence the results to some extent.

f. If the cost of gas sold was computed according to Exhibit "B" attached and consideration was given to the company's revenue from forfeited discounts referred to in Note "e" the net income shown on line 16 and the rate of return shown on line 17 would be changed as follows:

Net Income:					
Per line 16 above	$121,131	$109,837	$111,863	$94,826	$109,414
Difference cost of gas sold, Exhibit "B"	(5,367)	318	2,856	5,886	923
Forfeited discounts	.....	.....	4,599	4,213	2,203
Adjusted net income	$115,764	$110,155	$119,318	$104,925	$112,540
Rate of Return:					
Computed on adjusted net income	6.09%	5.79%	6.27%	5.52%	5.92%

( ) indicates red figures.

EXHIBIT B.

THE WEST OHIO GAS COMPANY

COMPUTATION OF COST OF MIXED GAS SOLD IN LIMA BASED UPON COST DATA SHOWN IN COMPANY'S EXHIBITS AND INCLUDING 7% ALLOWANCE FOR LEAKAGE APPROVED BY COMMISSION

Page	Explanation	Line	1928	1929	1930	1931	Average	Territory	
	A—Cost of Gas Produced and Purchased:								
T-537	Total cost of mixed gas.....	1	$151,291	$160,430	$159,475	$160,882	$158,020	Lima	Distr.
	B—Cubic Feet of Gas Produced and Purchased:								
T-537	Total gas produced and purchased.	2	427,797,839	451,828,886	448,465,845	462,469,300	447,640,467	Lima	Distr.
	Less, gas used by company.....	3	2,077,300	4,185,300	4,840,000	3,479,700	3,645,575	Lima	Distr.
	Net cubic feet of gas distributed..	4	425,720,539	447,643,586	443,625,845	458,989,600	443,994,892	Lima	Distr.
*	C—Cost Per M C. F. of Gas Distributed: Cost, line 1 divided by cubic feet, line 4.....	5	35.54¢	35.84¢	35.95¢	35.05¢	35.59¢	Lima	Distr.
	D—Cubic Feet of Gas Distributed in Lima:								
B-179A	Total cubic feet sold.....	6	395,423,300	399,309,500	380,297,500	354,148,800	382,294,775	Lima	City
*	#Add, leakage allowed by commission at 7%.....	7	27,679,631	27,951,665	26,620,825	24,790,416	26,760,634	Lima	City
*	Total cubic feet distributed in Lima	8	423,102,931	427,261,165	406,918,325	378,939,216	409,055,409	Lima	City
	E—Cost of Gas Distributed or Sold in Lima:								
*	Cubic feet, line 8 times cost per M c. f., line 5.....	9	$150,371	$153,130	$146,287	$132,818	$145,652	Lima	City
	F—Cost of Gas Sold Used on Exhibit "A":								
	Per line 3 of Exhibit "A".....	10	145,004	153,448	149,143	138,704	146,575	Lima	City
	G—Difference—Cost of Gas Sold:								
	Excess of line 9 over line 10.....	11	5,367	.....	.....	.....	.....	Lima	City
	Excess of line 10 over line 9.....	12	.....	318	2,856	5,886	923	Lima	City

T—Refers to the transcript of the record.

B—Refers to the company's brief.

#—At page 95 of the transcript the commission considers leakage as "based upon the amount purchased and manufactured as compared to the amount distributed" and allows 7% but does not state whether this 7% is computed on and added to gas sold to produce gas distributed or is computed on and deducted from gas distributed to produce gas sold. The first interpretation has been used in the above computations.

*—This is the mathematical average for the four years. Based upon the average cu. ft., line 8, and the average cost per M c. f., line 5, this average cost would be $145,582.82.

APPENDIX B.

Under the above heading in its brief appellant contends that the opinion of the state court contains misstatements and inaccuracies. These contentions are not supported by the record.

1. The appellant objects to the following statement of the state court on page 304 of its opinion: (R., 17.)

> "In 1923 the two properties were combined, the Natural Gas Company securing permission from the Public Utilities Commission to furnish the city with a mixed fuel gas. By this method the physical plant of the Gas Light Company was added to the system of the Natural Gas Company, and the loss by obsolescence was avoided. These two combined systems, together with replacements and additions, constitute the gas properties now being operated in the city of Lima by the plaintiff in error gas company."

Permit us to refer the court to the following testimony from the record in this connection (testimony of the company witness Pringle: R., 214, 216.)

> "Q. Mr. Pringle, prior to December 1, 1924, there was operated in the city of Lima the Lima Natural Gas Company, was there not? A. Yes, sir.
>
> Q. And that company was engaged in furnishing fuel gas to the inhabitants of the city? A. It was.
>
> Q. And that is the company by whom you were employed? A. Yes, sir.
>
> Q. They had been in business there a great many years prior to that time? A. That is correct.
>
> Q. And there was at the same time another cor-

poration known as the Lima Gas Light Company? A. There was.

Q. And that company's business was the furnishing of illuminating gas in the city of Lima? A. That is true.

Q. Do you today furnish gas for any other purpose except fuel purposes? A. No.

Q. You do not. That is to say, the business of selling illuminating gas no longer exists? A. I suppose some few people around Lima may be using gas for lighting purposes but I don't know of any personally.

Q. You would be surprised if you saw one of those? A. Perhaps.

Q. How long has it been since the business of selling illuminating gas was no longer profitable? A. I can't recall, Mr. Light.

Q. It was before December 1, 1924, was it not? A. Yes.

Q. So that on December 1, 1924, the Lima Gas Light Company had an entirely obsolete plant? A. No.

Q. So far as the business of that company was concerned it was obsolete? A. From the standpoint of lighting, selling gas for illuminating purposes, you might speak of it in that way.

Q. From that standpoint it was ready to be charged off as an entirety? A. I think at that time you mentioned it was engaged in selling a certain amount of gas each month to the Lima Natural Gas who was distributing mixed gas product to its customers.

Q. That company had been organized many years before that and had a system of pipes, a distribution system in the city of Lima? A. Yes, sir.

Q. Was it as old a company as the Lima Natural Gas Company? A. I think it was organized before the Lima Natural.

Q. Both of them were 20 or more years old at that time? A. I would think so.

Q. On December 1, 1924, there was also a corporation known as the Wapakoneta Natural Gas Company? A. Yes, sir.

Q. And another one, the St. Mary's Gas Company? A. Yes, sir.

Q. And another one, the Celina Gas Company? A. Yes, sir.

Q. All separate corporations? A. Yes.

Q. All right. Now, on December 1, 1924, these properties were consolidated and are now owned by the West Ohio Gas Company? A. That is true.

Q. And there was a consolidation of properties of the Lima Natural Gas Company and the Lima Gas Light Company at that time? A. Yes, sir.

Q. And the present holder and plant that you now claim as useful property in this case was originally the property which came from the Lima Gas Light Company? A. Yes, sir.

Q. Beginning December 1, 1924, the properties of the Lima Natural Gas Company and the properties of the Lima Gas Light Company were then completed and used only for fuel purposes, furnishing gas for fuel purposes in the city? A. Yes, sir.

Q. Now, at that time how much did you charge off or abandon as property not used and useful, do you remember that? A. I do not recall.

Q. If I suggest the figure will you recognize it? Was it approximately $11,309.94? A. I haven't any idea, Mr. Light.

Q. Don't you know that that is approximately the amount? A. No, I really don't because the opening entry was made by somebody from Chicago.

Q. Well, if your books show it that would be correct, wouldn't it? A. Absolutely."

2. The appellant objects to the statement of the state court that the plant "admittedly has a capacity of practically two or three times the requirements of Lima" and

that "the commission did not reduce the valuation of this plant". (R., 18.)

In this connection we quote the following testimony: (Company witness Pringle, R., 204.)

> "Commissioner Bricker: Coming back just one question, you estimated that your plant is capable of producing gas to how many more consumers than you have at the present time?
>
> The Witness: I would say from my knowledge probably double.
>
> Commissioner Bricker: A hundred per cent more, then, than you are really serving at the present time. In other words, your plant is adequate to the needs of 20,000 consumers upon your present basis of use per consumer?
>
> The Witness: Yes, sir."

(R., 205):

> "Commissioner Bricker: What was the reason for building a plant twice the needs of the present time?
>
> The Witness: I don't know whether I could answer that, Mr. Bricker, as I wasn't directly associated with those that determined the capacity to which the plant might be increased. • • •"

(Company Witness Curtin, R., 248):

> "Commissioner Bricker: How many subscribers would your plant as it is now constructed in Lima accommodate?
>
> The Witness: Well, probably half as many more by pushing the—half as many more as we have got. • • •"
>
> Q. Well, I will ask you this question, Mr. Curtin, going to just what you have said. You say that the plant will accommodate perhaps a half more customers than you have right now today? A. If we were to crowd it."

In view of the fact that the gas consumption in Lima per day is slightly in excess of 1,000,000 cubic feet, (R., 261, 371) the following testimony is interesting: (Company Witness Lynch, R., 265.)

> "Q. This manufacturing plant's capacity is 3,000,000 cubic feet of gas per 24 hours? A. Yes, sir."

and at page 292 Mr. Light states: (R., 292)

> "Mr. Light: May I call the commission's attention to one further fact? The testimony before the commission is that the capacity of the artificial plant is three million cubic feet per 24 hours. The testimony is further before the commission that the use of this plant in Lima per annum is about two hundred million cubic feet, or we are getting in Lima less than a 20 per cent use of that plant."

In addition to the over-capacity of the manufacturing plant the following testimony was introduced as to the excess capacity of the transmission line used in bringing natural gas into Lima: (Witness Allensworth, R., 427.)

> "Q. I didn't intend to go into any detail. The Lima plant includes the transmission line 44 miles long which belongs as a part of the Lima plant and is used to transport natural gas to the city gates? A. With the qualification, yes, that is right.
>
> Q. And it also includes an artificial plant located within the city? A. Yes.
>
> Q. Both are included as a part of the used property of the West Ohio Gas Company at Lima? A. In the valuation by the commission, yes.
>
> Q. The transmission line is large enough to supply double the requirements of Lima? A. Yes.
>
> Q. And the artificial plant is large enough to supply three times the needs of Lima, either independent of the other? A. No, sir; I do not think it is

quite that large. I think it is one third too large to meet the requirements of Lima.

In other words, this testimony, a portion of which is quoted by the company in their brief at page 195 (appellant's brief, Appendix B, p. 195) is to the effect that the natural gas facilities are sufficient to supply twice the requirements of Lima and that in addition and above that the artificial plant is one-third too large to meet the requirements of Lima. The only evidence found in the record as to any reduction made at all by the commission for this very great over-capacity is found at page 301 in the following statement of Witness Dabe:

"No, sir; there has been a 15 per cent deduction there taken off for over-capacity of plant."

We believe that sufficient testimony has been quoted to show that the statement of the state court to the effect that the plant had an admitted over-capacity of at least two or three times the requirements of the community it served was clearly established. As a matter of fact, in the argument before the state court counsel for the appellant, in response to a question from Judge Allen, admitted that the capacity of the plant was in excess of the needs of the community.

3. Counsel is in error when it contends that the state court found a total production cost of the mixed gas of 32½¢ per M c. f. The court's finding in this respect is as follows: (R., 19.)

"The attempt of the gas company to compare its rates with those prevailing where gas is supplied

alone by an artificial gas plant is also unwarranted. Lima is being supplied with a diluted natural gas. This 32½¢ per thousand production cost represents the gas company's figures, but nevertheless to that the commission added 3½¢ to cover incidental cost before distribution and leakage during distribution, making a total of 36¢ per thousand as the production cost. Subtracting this from the retail price of $1.29 claimed by the gas company leaves 93¢ for distribution and profit, a service which was performed twenty years ago for 12¢. The cost of gas in this period has increased about sixty per cent."

4. The contention of appellant that the state court was in error in stating that the amount remaining for distribution expense and profit to the company was 93¢ per M c. f. (R., 19.)

The record discloses that the cost of producing mixed gas was 36¢ per thousand cubic feet: (R., 334, 335, 421.)

Company Witness Pringle: (R., 421.)

"Q. Your average cost of production is about 35 cents? A. Somewhere along there."

The average cost to the consumer for the first thousand cubic feet was found by the commission to be $1.29. This leaves 93¢ for distribution and profit. (Commission's opinion, R., 90.)

5. The appellant objects to the following statement of the court: (R., 16.)

"The claim is made that residents of the city of Lima pay more for their gas per thousand cubic feet than any other city of Ohio. This is denied. Comparisons are made by way of proof and disproof. These comparisons add volume to the briefs, but are of little, if any, aid to the court."

In this connection we quote the following statement made by Company Witness Curtin: (R., 273.)

"Commissioner Klinger: Mr. Curtin, may I ask you this question? Have you visited other towns in Ohio that are being served by other companies to see how they are being served and what it costs other communities to get the same kind of service that you are giving Lima?

"The Witness: Why, yes, in a general way, judge.

"Commissioner Klinger: Well, now, what did you discover, is it true or not true that the area that is served by your company has to pay much more than other communities quite similarly situated?

The Witness: Yes, sir.

Commissioner Klinger: How?

The Witness: Yes, sir."

6. The appellant objects to the statement contained in the opinion of the court at page 306 wherein the court refers to the fact that there is evidence that the heating content of the gas supplied by the company does not average over 475 British thermal units per cubic foot, instead of 550 British thermal units.

The testimony on this subject is found at page 188, et seq. of the record. We quote the following testimony: (City Witness Smith, R., 190.)

"Q. Mr. Smith, tell the commission whether or not you prepared City's Exhibits 9-a, -b, -c, -d and -e. A. Yes, sir.

Q. Tell the commission whether or not that contains the tabulation of your analysis or the result of your examination of the gas of the West Ohio Gas Company at Lima, Ohio, as of the dates set forth in the exhibit. A. Yes, sir.

Q. What could you say to the commission as to

that being correct? A. I consider those adequate results.

Q. What do you mean by that? A. I mean that the examinations as shown in the report, estimations of the heating value of gas as used at our purification plant, are sufficiently precise to be comparable to any other results of the same type.

Commissioner Klinger: Is that a laboratory test?

The Witness: Yes, sir; it is a calorimetric test.

Chairman Geiger: You needn't examine your own witness. They will cross examine him. What does it show?

Mr. Light: It averages about 475.

Chairman Geiger: Let the witness answer. What does it average?

The Witness: The annual average for the part of '28 and '29 practically daily tests was 476 British thermal units per cubic foot."

City Exhibits 9-a, -b, -c, -d and -e are found in the record at page 568 to 572, inclusive.

7. The appellant objects to the following statement found on page 304 of the opinion of the state court:

> "In December, 1924, on the occasion of the transfer of the assets to the West Ohio Gas Company, the commission authorized the issuance of $3,376,000 of bonds and preferred stock securities." (R., 17-18.)

Permit us to quote from the record: (Company Witness Pringle, R., 405, 406.)

> "Q. That is, you issued securities of $3,376,000 and the Public Utilities' finding of value was $3,126,000? A. Yes.
>
> Q. Or $250,000.00 difference? A. Yes, sir.
>
> Q. Which you added as an asset on your books? A. The amount of $3,376,381 is the amount that appears on our books."

stock was sold to the Midland Utilities Company at 87½ per cent, the price fixed by the commission."

And at page 403: (Witness Pringle, R., 408.)

"Q. Is December the first, 1-24 the date of the purchase of these properties by the Insull interests? A. What is it?

Q. What is the date of the acquisition of these properties by the Insull interests? A. No, the Insull interests controlled the several separate and distinct corporations prior to December 1, '24, but December the first, '24—

Q. So that the West Ohio Gas Company was a reorganization of properties already held by the Insulls? A. Yes, sir."

And finally at p. 218: (Witness Pringle, R., 218.)

"Chairman Geiger: Well who owns your common stock?

The Witness: The Midland Utilities Company of Chicago.

Chairman Geiger: And who owns the stock of the Midland?

The Witness: I don't know.

Chairman Geiger: Are you in any way affiliated either with the Ohio gas company or the Columbia?

The Witness: No connection whatsoever. The Midland Utilities is an Insull organization.

Chairman Geiger: What organization is your company in?

The Witness: In the Midland Utilities. We are controlled by the Midland of Chicago.

Chairman Geiger: Well, it is a larger group yet?

The Witness: The Insull organization."

And yet counsel for the appellant at page 201 of its brief (appellant's brief, Appendix B, p. 201) says "the statement that the stock was sold to another Insull company" is incorrect.

APPENDIX C.

Applicable Statutory Provisions.

General Code of Ohio, Section 499-15:

"For the purpose of ascertaining the value of the property of every public utility or railroad in this state, including municipally owned or operated utilities, the commission may cause a hearing or hearings to be held at such time or times and place or places as the commission may designate. Before any hearing is had, the commission shall give the public utility or railroad affected thereby, or if the whole or the major portion of said utility or railroad is situated in any municipality, then to the mayor of such municipality, at least thirty days' written notice specifying the time and place of hearing, and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section, but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to, or from inquiring into such matters in any other investigation or hearing. All public utilities or railroads affected, and any municipality in which the whole or the major portion of said utility or railroad is located, shall be entitled to be heard and to introduce evidence at such hearing or hearings. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission."

General Code of Ohio, Section 543:

"* * * No cause of action arising out of any order or decision of the commission shall accrue in

any court to any corporation or person unless such corporation or person shall have made, before the effective date of said order or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said decision or order to be unreasonable or unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in said application."

General Code of Ohio, Section 614-44:

(See appellant's brief, Appendix C, p. 204.)

General Code of Ohio, Section 614-45:

"No such complaint or appeal to the commission shall suspend, vacate, or set aside the rate, price, charge, toll or rental fixed by ordinance unless such public utility shall elect to charge the rate, price, charge, toll or rental in force and effect immediately prior to the taking effect of the regulation complained of and appealed from and shall give an undertaking in such amount as the commission shall determine. * * * The condition of the undertaking shall be that such public utility shall refund to each of its consumers, public or private, the amount collected by it in excess of the amount which shall finally be determined it was authorized to collect from such consumers."

General Code of Ohio, Section 614-46:

(See appellant's brief, Appendix C, p. 205, et seq.)

General Code of Ohio, Section 614-48:

"Every public utility shall file with the commission, at such times and in such form as it may prescribe, an annual report, duly verified, covering the yearly period fixed by the commission. The commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form therefor. If any such report is defective or erroneous, the commission may order the same to be amended within a prescribed time. Such annual reports shall be preserved in the office of the commission. The commission may, at any time, require specific answers to questions upon which it may desire information."

General Code of Ohio, Section 3982:

(See appellant's brief, Appendix C, p. 207.)

General Code of Ohio, Section 3983:

(See appellant's brief, Appendix C, p. 207-208.)

5

SUPREME COURT OF THE UNITED STATES.

No. 212.—October Term, 1934.

West Ohio Gas Company, Appellant, vs. The Public Utilities Commission of Ohio, Appellee. } Appeal from the Supreme Court of the State of Ohio.

[January 7, 1935.]

Mr. Justice Cardozo delivered the opinion of the Court.

The appellant, West Ohio Gas Company, supplies gas to the inhabitants of the city of Lima, Ohio, and to neighboring communities, part of what it sells being artificial gas manufactured by itself and part natural gas bought from another company which is wholly independent.

On March 19, 1928, the municipal authorities of the city of Lima passed an ordinance, effective April 19, prescribing the maximum price to be charged for gas to consumers within the city during a period of five years. The rates were to be as follows: for the first 1,000 cubic feet of gas, 90 cents per month; for the next 3,000 cubic feet per month, 80 cents per m. c. f.; for the next 6,000, 75 cents per m. c. f.; and for all over 10,000 per month, 55 cents per m. c. f. This was a sharp reduction of the rates previously charged, which were $1.25 for the first 400 cubic feet; $1.05 for the next 9,600 cubic feet; $1 for the next 15,000; and for all over 25,000, 75 cents per m. c. f.

In adherence to the Ohio statutes (Ohio General Code, sections 614-44 et seq.), the company filed a complaint with the Public Utilities Commission of Ohio, protesting against the ordinance, praying that the commission fix a fair and reasonable schedule, electing, as it might, to charge in the meantime the rates previously in force, and giving bond for the return of the excess, if any. The hearings before the Commission began in July, 1928, and ended in July, 1932. While the proceeding was pending, there was a final order of valuation, made in January, 1932, whereby the value of the property in Lima, used and useful for the business, was fixed at $1,901,696.26 as of March 31, 1928, approximately the date of

the adoption of the ordinance. There being no appeal from that order within the time prescribed by law, it became binding on the company, as well as on the commission, though the valuation was less than the company had urged. 128 Ohio St. 301, 311. The rate base being thus established, what was next to be ascertained was the amount of the operating expenses as compared with the gross income, after which a conclusion could be drawn as to the rates that would be necessary for a fair return on the investment. An order entered by the commission on March 10, 1933, adjudged the rates under the ordinance to be insufficient and unjust. It substituted rates averaging about 13½% less than those that the company had been charging: for 400 cubic feet or less per month, $1; for the next 9,600, 95 cents per m. c .f.; for anything in excess of 10,000 cubic feet per month, 75 cents per m. c. f., with penalties to be charged if payment was delayed. The rates so fixed were to be retroactive as of the effective date of the ordinance, April 19, 1928, from which time they were to remain in force for a term of five years, and the difference between their yield and the amount collected by the company was to be refunded to consumers. A motion for a rehearing having been denied, the company filed a petition in error with the Supreme Court of Ohio, invoking the protection of the Fourteenth Amendment. The order of the commission was affirmed (128 Ohio St. 301), and the case is here upon appeal.

The commission made its order, as it has informed us by an amended opinion, in the belief that the new rates would yield a return of 6.65% on the value of the property included in the base. Its estimate was wide of the mark as a result of mathematical errors, and this on the assumption that its rulings as to the items of operating expenses to be allowed or disallowed were correct in fact and law. Even on that assumption, the average net income during the four years of the ordinance period for which figures were available was $109,414, which upon a rate base of $1,901,696 is equivalent to an average return of about 5.75%. This is now admitted by counsel for the commission, and must be accepted as a datum. What is still to be determined is whether the rate of return has been further overestimated to the point of confiscation through error in the rejection of charges upon income.

1. The company made claim to an allowance for "unaccounted for gas", which is gas lost as a result of leakage, condensation, ex-

pansion or contraction. There is no dispute that a certain loss through these causes is unavoidable, no matter how carefully the business is conducted. Cf. *Consolidated Gas Co.* v. *Newton*, 267 Fed. 231, 244; *Brooklyn Union Gas Co.* v. *Prendergast*, 7 F. (2d) 628, 652, 671. The company, basing its claim upon its proved experience, reported the average loss as 9% per annum. The Commission fixed the allowance at 7%, thereby reducing the operating expenses by $3,800 a year. In making this reduction, it did not deny that the loss had been suffered to the extent stated by the company. The presumption of correctness that gives aid in controversies of this order to the books of public service corporations (*Consolidated Gas Co.* v. *Newton, supra,* at p. 242; *Newton* v. *Consolidated Gas Co.*, 258 U. S. 165, 176) was confirmed in this instance by what amounts to a finding of regularity. Accepting the loss as proved, the commission refused to allow it for more than 7% upon the ground that with proper care of the system the loss would have been less. A public utility will not be permitted to include negligent or wasteful losses among its operating charges. The waste or negligence, however, must be established by evidence of one kind or another, either direct or circumstantial. In all the pages of this record, there is neither a word nor a circumstance to charge the management with fault. Cf. *Ohio Utilities Co.* v. *Public Utilities Commission of Ohio*, 267 U. S. 359, 363. There is not even the shadow of a warning to the company that fault was imputed and that it must give evidence of care. Without anything to suggest that there was such an issue in the case, the commission struck off 2%: it might with as much reason have struck off 4 or 6. This was wholly arbitrary. *Ohio Utilities Co.* v. *Public Utilities Commission of Ohio, supra.*

Under the statutes of Ohio no provision is made for a review of the order of the Commission by a separate or independent suit. The sole method of review is by petition in error to the Ohio Supreme Court, which considers both the law and the facts. *Dayton P. & L. Co.* v. *P. U. Commission of Ohio*, 292 U. S. 290, 302; *Hocking Valley Ry. Co.* v. *Public Utilities Commission*, 100 Ohio St. 321, 326, 327; 126 N. E. 397. To make such review adequate the record must exhibit in some way the facts relied upon by the court to repel unimpeached evidence submitted for the company. If that were not so, a complainant would be helpless, for the infer-

ence would always be possible that the court and the Commission had drawn upon undisclosed sources of information unavailable to others. A hearing is not judicial, at least in any adequate sense, unless the evidence can be known.

2. The company made claim to an allowance of "distribution expenses" incurred in the superintendence of distribution, in work on the premises of customers incidental to the service, in the change of meters used to measure the gas sold, and in the maintenance of local mains and equipment. There is no denial, even now, that these expenses were incurred as claimed. There was no challenge upon the trial to the practice of the company whereby moneys spent in Lima, the territorial unit affected by the ordinance, were allocated to that city, and not to territory beyond. The case was tried on the assumption that the practice was acceptable and was so submitted for decision. Eight months later, on the eve of a determination, the commission conceived the thought that distribution costs in Lima should be borne also by consumers in outlying communities (including the city of Kenton) served by the same company, which would mean, of course, that like expenses in the other communities must be borne by residents of Lima. Up to that stage the data were lacking for a division on that basis. Accordingly, by an order made *ex parte* on March 8, 1933, without the appellant's knowledge, the commission directed of its own motion that the annual reports for the years 1928 to 1931 inclusive be introduced in evidence and made a part of the record. On the basis of these reports it ascertained the average distribution expense per customer for all the eleven communities served by the appellant, multiplied this average by the number of customers in Lima, and thus arrived at the share to be allocated to that city in the determination of the local rates. By that mode of apportionment, the operating expenses were reduced to the extent of $6,200 annually.

We do not now decide that there would be a denial of due process through the spread of distributing costs over the total area of service, if the new method of allocation had been adopted after timely notice to the company and then consistently applied. This court does not sit as a board of revision with power to review the action of administrative agencies upon grounds unrelated to the maintenance of constitutional immunities. *Los Angeles Gas & Electric Corp.* v. *Railroad Commission of California*, 289 U. S. 287.

Our inquiry in rate cases coming here from the state courts is whether the action of the state officials in the totality of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation. If this level is attained, and attained with suitable opportunity through evidence and argument (*Southern Ry. Co.* v. *Virginia*, 290 U. S. 190) to challenge the result, there is no denial of due process, though the proceeding is shot through with irregularity or error. But the weakness of the case for the appellee is that the fundamentals of a fair hearing were not conceded to the company. Opportunity did not exist to supplement or explain the annual reports as to the distribution of the expenses in the neighboring communities, nor did opportunity exist to bring the rates outside of Lima into harmony with the exigencies of a new method of allocation adopted without warning.

The need for such an opportunity is brought into clear relief by the record in number 213, a case submitted along with this one, and within the range of our judicial notice. *Butler* v. *Eaton*, 141 U. S. 240, 243, 244; *Aspen Mining & Smelting Co.* v. *Billings*, 150 U. S. 31, 38; *Bienville Water Supply Co.* v. *Mobile*, 186 U. S. 212, 217; *Fritzlen* v. *Boatmen's Bank*, 212 U. S. 364, 370. The subject matter of that case was the rate schedule for the city of Kenton, served with gas by the appellant. In Kenton, unlike Lima, a spread of distribution costs over the whole area of service would have been favorable to the appellant and unfavorable to customers. Strange to say the commission, though prescribing the larger area for Lima, adopted the smaller one for Kenton, and this by a decision rendered the same day. An injustice so obvious may not be suffered to prevail. The commission by its counsel suggests as an excuse that a division on a different basis was not requested by the company. There was no reason to request it, for the record as made up when the case was finally submitted did not contain the necessary data for a spread over a larger area, nor was there any hint by the commission that such a division was in view. Manifestly, whatever territorial unit is adopted must be made use of consistently, and regardless of the consequences. If a different course were to be followed, there would be less than full requital after all the communities affected had contributed their quotas.

To resume: division on one basis in Lima and on another basis in Kenton, all without notice to the company that the spread was

to be altered and new evidence received, was an exercise of arbitrary power, at variance with "the rudiments of fair play" (*Chicago, Milwaukee and St. Paul R. Co.* v. *Polt*, 232 U. S. 165, 168) long known to our law. The Fourteenth Amendment condemns such methods and defeats them.

3. The company made claim to commercial expenses incurred in reading the meters of the customers, keeping their accounts, and sending out and collecting bills. The commission treated these items the same way that it treated the expenses of distribution, and spread them over the whole territory instead of confining them to Lima. The result was a reduction of operating expenses to the extent of $1,085.25 yearly. For reasons already stated, the reduction may not stand.

4. The company made claim to expenses incurred in procuring new business or in the endeavor to procure it, such expenses amounting on the average to $12,000 a year. The commission did not question the fact of payment, but cut down the allowance to $5,000 a year on the ground that anything more was unnecessary and wasteful. The criticism has no basis in evidence, either direct or circumstantial. Good faith is to be presumed on the part of the managers of a business. *Southwestern Bell Telephone Co.* v. *Public Service Commission of Missouri*, 262 U. S. 276, 288, 289. In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay. *Banton* v. *Belt Line Railway Corp.*, 268 U. S. 413, 421; *Brooklyn Borough Gas Co.* v. *Prendergast*, 16 F. (2d) 615, 623; *New York & Richmond Gas Co.* v. *Prendergast*, 10 F. (2d) 167, 181. The suggestion is made that there is no evidence of competition. We take judicial notice of the fact that gas is in competition with other forms of fuel, such as oil and electricity. A business never stands still. It either grows or decays. Within the limits of reason, advertising or development expenses to foster normal growth are legitimate charges upon income for rate purposes as for others. *Consolidated Gas Co.* v. *Newton*, *supra*, at p. 253. When a business disintegrates, there is damage to the stockholders, but damage also to the customers in the cost or quality of service.

5. The company made claim to an allowance of the expenses of the rate litigation amounting in all to about $30,000, to be spread

in equal parts over a term of five years, the duration of the ordinance. No part of these expenses has been allowed, though apparently both commission and court intended to allow them, spreading them, however, over a term of six years instead of five. "It must be conceded," said the court, "that the gas company is entitled to a fair and reasonable allowance for rate case expenses." This is followed by the statement that if the spread be six years (instead of five), and $5,100 be allowed for each of those years "as contended by the commission," the rate fixed by the order will give an adequate return. True there is also the statement that the commission would have been warranted in ignoring this item altogether "in the absence of proof that the gas company's book figures represented an amount that was fair and reasonable." Even in that remark the implication is obvious that this is not what the commission did. Moreover, there is nothing in the record justifying an inference that the figures were erroneous or the payments improvident. *Consol. Gas Co.* v. *Newton, supra,* at p. 242; *Newton* v. *Consol. Gas Co., supra,* at p. 176. The course of the trial exhibits very clearly the understanding of the parties that expenditures shown by the books would be deemed to have been made in good faith and with reasonable judgment unless evidence was at hand overcoming the presumption. In the absence of any challenge of their necessity or fairness, we must view them as they were accepted by the triers of the facts.

Thus viewing them, we think they must be included among the costs of operation in the computation of a fair return. The company had complained to the Commission that an ordinance regulating its rates was in contravention of the statutes of the state and of the constitution of the nation. In that complaint it prevailed. The charges of engineers and counsel, incurred in defense of its security and perhaps its very life, were as appropriate and even necessary as expenses could well be.

A different case would be here if the company's complaint had been unfounded, or if the cost of the proceeding had been swollen by untenable objections. There is neither evidence nor even claim that the conduct of the company's representatives was open to that reproach. The statute laid a duty on the commission, when it found the ordinance unjust, to prescribe its own schedule. The one it adopted though higher than the one condemned, did not satisfy the company, but there was nothing unreasonable or ob-

structive in laying before the commission whatever data might be helpful to that body in reaching a considered judgment. Indeed, we shall be brought to the conclusion, if we analyze the record, that the two phases of the controversy were substantially coincident. Everything relevant to the schedule adopted by the commission was relevant also to an inquiry into the fairness of the ordinance.

In this matter of rate case expenses, we must distinguish between the function of a court and that of a commission. A court passing upon a challenge to the validity of statutory rates does not determine the rates to be adopted as a substitute. *Central Kentucky Natural Gas Co.* v. *Railroad Commission of Kentucky*, 290 U. S. 264, 271, 272; *Newton* v. *Consolidated Gas Co., supra.* If the rates are inadequate to the point of confiscation, the complainant has no need, it is said, to count upon the expenses of the lawsuit; if they are not already inadequate, the lawsuit cannot make them so. Cf. *Columbus Gas & Fuel Co.* v. *City of Columbus*, 17 F. (2d) 630, 640. An argument to that effect runs through some of the decisions, though we are not required now either to accept or to reject it. But the case is different where a commission, after setting a schedule of rates aside, is empowered to substitute another to take effect by retroaction and cover the same years. In determining what the substitute shall be, the commission must give heed to all legitimate expenses that will be charges upon income during the term of regulation, and in such a reckoning the expenses of the controversy engendered by the ordinance must have a place like any others. *Denver Union Stockyard Co.* v. *United States*, 57 F. (2d) 735, 753, 754; *New York & Richmond Gas Co.* v. *Prendergast, supra*, at pp. 181, 182; *Monroe Gas Light Co.* v. *Michigan Public Utilities Commission*, 11 F. (2d) 319, 325.

There are suggestions in the books that the cost of litigation is to be reckoned as an extraordinary expense and so a charge upon capital rather than a charge upon income to be paid out of the revenues of one year or of many. Cf. *New York & Queens Gas Co.* v. *Newton*, 269 Fed. 277, 290; *Reno P. L. & W. Co.* v. *Public Service Commission*, 298 Fed. 790, 801; *contra, New York & Richmond Gas Co.* v. *Prendergast, supra*, at pp. 181, 182; *Mobile Gas Co.* v. *Patterson*, 293 Fed. 208, 224. There is no need to consider what practice is to be followed where the rate is prescribed for a period of indefinite duration, though there would seem to be little difficulty in amortizing the charge over a reasonable term. Cf.

New York & Richmond Gas Co. v. *Prendergast, supra.* In the case at hand, the period of duration has been definitely fixed, and the charge upon the income can be distributed accordingly.

We conclude that an addition of $5,100 must be made to the yearly operating expenses as the cost of proceedings necessary to keep the business going. Cf. *Kornhauser* v. *United States,* 276 U. S. 145. The company makes no point as to the ruling of the commission that the cost should be spread over six years instead of five, and we follow that concession.

6. The items enumerated in subdivisions 1 to 5 of this opinion amount altogether to $23,185.25 annually. Added to the operating charges they reduce the net income from $109,414 to $86,228.75, or about 4.53% upon the rate base of $1,901,696. This is too low a rate to satisfy the requirements of the Constitution when applied to a corporation engaged in the sale of gas during the years 1928 to 1931, two at least of the four years being before the days of the depression. *Los Angeles Gas & Electric Co.* v. *Railroad Commission of California, supra,* at pp. 319, 320; *Dayton Power & Light Co.* v. *Public Utilities Commission of Ohio,* 292 U. S. 290, 311; *Southwestern Bell Telephone Co.* v. *Public Service Commission, supra,* at p. 288; *Ohio Utilities Co.* v. *Public Utilities Comm. of Ohio, supra,* at p. 364.

Counsel for the commission argues that disbursements for charitable and other gifts, allowed by the commission, ought in law to have been excluded. This may well be, but the record is too meagre to enable us to ascertain with certainty the reasons for the payments. Cf. *Old Mission Portland Cement Co.* v. *Helvering,* Dec. 3, 1934, — U. S. —; *In re Southern California Edison Co.,* P. U. R. (1924c) 1, at pp. 32, 33. We do not feel at liberty to eliminate them upon inconclusive testimony when court and commission have treated them as proper. If, however, all were to be dropped, the increment to the rate would be only about one-tenth of one per cent. The change would be too small to induce a different conclusion.

Counsel also argues that the rate base, though fixed by the commission in January, 1932, was determined as of March, 1928, when the ordinance was passed, and we are reminded that since that time there has been a marked decline of values, at least during the later years of the period affected. How great the decline has been we cannot learn with any accuracy from the record now before us.

The value fixed by the commission was adopted as the base on which to estimate the rate of return at the beginning of the period, but also at the end. The company acquiesced, believing that the valuation would be effective during every portion of the term, and abandoned the appeal it might otherwise have taken. Under the statutes of Ohio the "sum so fixed must be regarded as a valuation binding upon the Gas Company and the city alike, and is the rate base." 128 Ohio St. 301. No other sum was considered by the commission, or deemed to be properly before it. No other sum was subject to consideration upon the petition in error to the court. To put into the case now an issue heretofore kept out of it and thereby reach another value would be a denial of a full and fair hearing by the tribunals of the state, a denial forbidden by the constitution of the nation. If the appellee may be heard to say that during some part of the term the valuation was too high, the company must be free to urge that at other times it was too low. Upon the record now submitted to us no such issue is involved. To bring it into the case at all there is need of a new hearing with a new reckoning of the rate base, unhampered by restrictions to any single point of time. Only in that way can review be full and fair.

7. The company makes the claim that it has received an inadequate allowance to the extent of $28,021.40 for depreciation reserve, and that it should have been permitted to amortize the value of a transmission main extending from Lima to fields of natural gas, thereby adding $22,935.97 to its operating charges.

We have considered these objections, and are unable to uphold them.

The decree is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 212.—October Term, 1934.

West Ohio Gas Company, Appellant, *vs.* The Public Utilities Commission of Ohio, Appellee. } Appeal from the Supreme Court of the State of Ohio.

[January 7, 1935.]

Mr. Justice Stone, concurring.

As there was a denial of due process by the Commission in arbitrarily reducing the allowance for "unaccounted for gas," and in failing to apply consistently either of the two methods of allocation of distribution and commercial expenses adopted in the two cases submitted to us, I concur in the judgment of the Court that the case must be remanded for further proceedings. But with two of the conclusions in the opinion I am unable to agree.

1. I think that the petitioner has failed to sustain the burden, which rests upon it in a confiscation case from a state court as well as from any other, to show that the item of expense for "new business" was a proper charge against gross income. The property for which constitutional protection is invoked is that "used and useful in the public service," not the enlarged business of the future which petitioner hopes to obtain through the present expenditure of money. I know of no constitutional principle upon which this expenditure must be taken from the pockets of the patrons of the present business, any more than the cost of future service lines required to carry on the new business. The record does not suggest that the expenditure for new business was necessary to prevent shrinkage of the present business, and the petitioner has failed to show that the charge is not a capital charge, which it appears on its face to be. If the action of the Commission with respect to this item alone were sustained, the rate of return, as found by this court, would be increased to 4.91%.

2. I am not prepared to say that petitioner sustains the burden of showing confiscation, by showing a rate of return even as low

as 4.91% where it is upon reproduction value determined as of March 31, 1928. We judicially know, and cannot ignore, the large declines in price levels and the earnings of capital which have taken place since that date. The period for which the ordinance fixed the rate extends from April 19, 1928, to April 19, 1933. At least three of the five years are those of declining prices and diminishing capital returns. Since the commission's order was based on known income for four of the five years, the possibly lowered revenues of the fifth year cannot be taken to off-set the effect of the declining prices and capital returns. The record gives no hint of what the rate base would be were it ascertained for the entire period. While the Commission and the Ohio courts are bound to adopt a rate base determined as of the beginning of the ordinance period, this does not relieve the company of the burden of showing that the value of the property for the entire period is such that the net return under the Commission's rates would have been so low as to confiscate its property. See *Los Angeles Gas & Elec. Corp.* v. *Railroad Commission*, 289 U. S. 266, 304. No contention is made that the Ohio procedure precludes such proof or that it prevented petitioner from showing facts which would establish confiscation.